

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#1a)  
Senate Foreign Relations Committee  
April 5, 2006**

**The President's Visit to India**

**Question:**

Secretary Rice, during the course of the President's visit to India, and afterward, U.S. officials commented that some 18 agreements were reached with India regarding cooperation in a host of spheres.

- (a) With regard to each such agreement, could you furnish the Committee with the text of those agreements, if texts exist?

**Answer:**

The relevant documents pertaining to the 18 initiatives undertaken during the President's visit to India are the March 2 Joint Statement, as issued by President Bush and Prime Minister Singh, as well as more detailed Fact Sheets released by the State Department. These documents are included with this package.

In addition, the 18 initiatives are outlined on the attached list of official deliverables for the President's visit.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#1b)  
Senate Foreign Relations Committee  
April 5, 2006**

**The President's Visit to India**

**Question:**

Secretary Rice, during the course of the President's visit to India, and afterward, U.S. officials commented that some 18 agreements were reached with India regarding cooperation in a host of spheres.

- (b) Was anything signed by the President while he was in India?

**Answer:**

As these initiatives are not formal agreements or treaties, but rather political commitments that both sides have undertaken, nothing was signed by the President while he was in India.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#1c)  
Senate Foreign Relations Committee  
April 5, 2006**

**The President's Visit to India**

**Question:**

Secretary Rice, during the course of the President's visit to India, and afterward, U.S. officials commented that some 18 agreements were reached with India regarding cooperation in a host of spheres.

- (c) Would any of these understandings require Congressional involvement through statutory amendments?

**Answer:**

Only the Civil Nuclear Cooperation Initiative requires legislative changes. As they are currently structured, none of the other initiatives that we have undertaken with the Indian government will require such changes.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#1)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Indian Separation Plan**

**Question:**

Secretary Rice, how will the Safeguards applied to India's declared sites, facilities, locations, and materials, verify that no activities of a military nature are being carried out at any site, facility or location or within any such materials?

**Answer:**

This Initiative will only allow for nuclear cooperation to proceed with civil facilities and programs that are safeguarded by the IAEA. The Government of India has agreed that these safeguards will be in place in perpetuity. Under the Initiative, India has committed to place all its current and future civil nuclear facilities under IAEA safeguards, including monitoring and inspections. These procedures are designed to detect – and thereby prevent – the diversion to military use of any nuclear materials, technologies, or equipment provided to India's civil nuclear facilities. India has also committed to sign and adhere to an Additional Protocol, which provides for even broader IAEA access to facilities and information regarding nuclear related activities.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#2)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Indian Separation Plan**

**Question:**

The separation plan tabled by the Indian Government with its Parliament states nothing about the future bureaucratic structure of its Department of Atomic Energy (DAE) in respect of removing from that organization any personnel involved in any military activities. To what extent will DAE personnel working at any declared sites, facilities and locations continue to have access to military programs in India?

**Answer:**

In the July 18, 2005 Joint Statement and under India's March 2, 2006 separation plan, the Government of India committed to separate its civil and military facilities and programs. While the specific issue of DAE personnel has not yet been discussed in detail, we would consider routine, frequent rotation of personnel between civil and military programs as being inconsistent with Indian commitments on separation. In our view, such a rotation would be inconsistent with India's commitment to identify and separate its civil and military nuclear facilities and programs. We have made this position clear to the Indian government.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#3)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Indian Separation Plan**

**Question:**

According to India's implementation document, facilities were excluded from the civilian list if they were located in a larger hub of strategic significance (e.g., BARC), even if they were not normally engaged in activities of strategic significance. Moreover, the document noted that reactors would be connected to the electricity grid "irrespective of whether the reactor concerned is civilian or not civilian."

- (a) Do these two positions of India's negatively affect the extent of separation of civilian and military nuclear facilities in India?
- (b) Which facilities (or how many) not engaged in strategic activities were left off the civilian list because they were located in a larger hub of strategic significance?
- (c) How many of India's existing eight indigenous PHWRs that are declared as military reactors will remain connected to the electricity grid?

**Answer:**

India's positions on these issues do not negatively affect the extent of separation of civil and military nuclear facilities. The number of facilities declared civil by the Indian government is unrelated to its ability to achieve an effective separation and to place those facilities under safeguards.

Regardless of whether they might be used to generate electric power or not, reactors that are not declared civil, and thus are not under IAEA safeguards,

cannot legitimately receive nuclear fuel or other nuclear cooperation from any State party to the NPT.

India has committed to providing a declaration to the IAEA of its civil nuclear program; it has not publicly committed to filing such a declaration with respect to its strategic facilities. As such, India may chose not to provide to the IAEA information to answer subpoints (b) and (c).

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#4)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Indian Separation Plan**

**Question:**

Will Indian officials involved in India's strategic programs have access to India's declared civilian sites, facilities, locations and materials?

**Answer:**

In the July 18, 2005 Joint Statement and as provided for under the March 2, 2006 separation plan, India committed to separate its civil and military facilities and programs. We would consider the term "programs" to include both program-related activities and the personnel involved in those activities. Routine rotation of personnel between civil and military programs would be inconsistent with Indian commitments on civil-military separation.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#5a)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Indian Separation Plan**

**Question:**

Under Secretary of State for Arms Control and International Security Robert Joseph told members of the Committee on November 2, 2005, that India's separation of facilities must be credible, transparent, meaningful, and defensible from a nonproliferation standpoint. He also told members that a separation plan and resultant safeguards agreement must contribute to U.S. nonproliferation goals.

- (a) Please describe in detail the criteria U.S. officials used for determining that India's separation plan is credible; transparent; meaningful; and defensible from a nonproliferation standpoint.

**Answer:**

The criteria were based on the totality of India's separation plan and its commitment on future civil facilities. For the plan to be transparent, it had to be articulated publicly, which it has been. For it to be credible and defensible from a nonproliferation standpoint, it had to capture more than just a token number of Indian nuclear facilities, which it did by encompassing nearly two-thirds of India's current and planned thermal power reactors as well as all future civil thermal and breeder reactors. Importantly, for the safeguards to be meaningful, India had to commit to apply IAEA safeguards in perpetuity; it did so. Once a reactor is under

IAEA safeguards, those safeguards will remain there permanently and on an unconditional basis. Further, in our view, the plan also needed to include upstream and downstream facilities associated with the safeguarded reactors to provide a true separation of civil and military programs. India committed to these steps, and we have concluded that its separation plan meets the criteria established: it is credible, transparent, and defensible from a nonproliferation standpoint.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#5b)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Indian Separation Plan**

**Question:**

Under Secretary of State for Arms Control and International Security Robert Joseph told members of the Committee on November 2, 2005, that India's separation of facilities must be credible, transparent, meaningful, and defensible from a nonproliferation standpoint. He also told members that a separation plan and resultant safeguards agreement must contribute to U.S. nonproliferation goals.

- (b) Please describe the U.S. nonproliferation goals to which the separation plan and resultant safeguards contribute, including where these nonproliferation goals are articulated (e.g., the 2002 National Strategy to Combat Weapons of Mass Destruction or the President's 2004 NDU speech).

**Answer:**

The Civil Nuclear Cooperation Initiative contributes to U.S. nonproliferation goals and represents a net gain for nonproliferation because it will, once implemented, more closely align India with the international nonproliferation mainstream than at any previous time. India has pledged to submit its civil nuclear program to international inspection and take on significant new nonproliferation commitments in exchange for full civil nuclear cooperation with the international community.

As Under Secretary Joseph testified in November, there is no viable cookie-cutter approach to nonproliferation; we need tailored approaches that solve real-world problems. This has been a premise of Administration policy since the outset of President Bush's first term, in which he established nonproliferation and counter-proliferation as top national security priorities.

The Civil Nuclear Cooperation Initiative is one such approach. It is consistent with the 2002 *National Strategy to Combat Weapons of Mass Destruction* which noted, with an eye to "strengthening" nonproliferation, that "[c]onsistent with other policy priorities, we will promote new agreements and arrangements that serve our nonproliferation goals." This strategy, *inter alia*, underscored that the United States will support existing nonproliferation regimes and work to improve the effectiveness of, and compliance with, those regimes. The nonproliferation-related commitments India has made serve to strengthen the international regime.

In this context, India's commitments also advance key efforts contained in President Bush's 2004 National Defense University speech. In particular, as part of this Initiative, India committed to conclude an Additional Protocol. It also committed to refrain from transfers of enrichment and reprocessing technology to countries that do not already have those capabilities, and to support international efforts to limit their spread. Moreover, India's implementation of its enhanced export controls

and of its acceptance of IAEA safeguards will contribute to fulfillment of the objectives of UN Security Council Resolution 1540.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#6a)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Indian Separation Plan**

**Question:**

Secretary Rice, in November 2005, U/S Joseph stated that “We have sought India’s curtailment of fissile material production but have not reached agreement on this issue.” Prior to the President’s March visit to India, experts who testified before Congress stated that they believed you were seeking to ensure that India’s breeder reactors were placed under safeguards in order to establish an “effective” but not explicit cap on Indian fissile material production.

- (a) Since no breeder reactor, electric or thermal, was declared civilian and placed under safeguards in India’s March 7, 2006, Separation Plan, do you believe that the Administration’s proposal for atomic energy cooperation with India could still constitute an “effective” cap on Indian fissile material production?

**Answer:**

As the Secretary testified on April 5, 2006, the “Initiative does not cap India’s nuclear weapons production, but nothing under this Initiative will directly enhance its military capability or add to its military stockpile.”

The United States successfully obtained India’s commitment to work toward the conclusion of a multilateral Fissile Material Cutoff Treaty (FMCT). We continue to call on all states that produce fissile material for weapons purposes to observe a voluntary production moratorium, as the

United States has done for many years. Moreover, we also remain willing to explore other intermediate objectives that might also serve such an objective. Finally, as part of our discussions with both India and Pakistan, we continue to encourage strategic restraint.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#6b)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Indian Separation Plan**

**Question:**

Secretary Rice, in November 2005, U/S Joseph stated that “We have sought India’s curtailment of fissile material production but have not reached agreement on this issue.” Prior to the President’s March visit to India, experts who testified before Congress stated that they believed you were seeking to ensure that India’s breeder reactors were placed under safeguards in order to establish an “effective” but not explicit cap on Indian fissile material production.

- (b) What reason did India give for not declaring its extant 40 MWth Fast Breeder Test Reactor (FBTR) to be civilian?

**Answer:**

We cannot speak for the Government of India, of course, but in our discussions Indian officials argued that since the FBTR was still in the experimental stage, India not in a position to accept safeguards on the reactor at this time.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#6c)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Indian Separation Plan**

**Question:**

Secretary Rice, in November 2005, U/S Joseph stated that “We have sought India’s curtailment of fissile material production but have not reached agreement on this issue.” Prior to the President’s March visit to India, experts who testified before Congress stated that they believed you were seeking to ensure that India’s breeder reactors were placed under safeguards in order to establish an “effective” but not explicit cap on Indian fissile material production.

- (c) What reason did India give for not declaring the 500 MWe fast breeder reactor it currently has under construction to be part of its civilian program?

**Answer:**

The reactor is not yet complete. India stated that it was not in a position to place reactors which it considers experimental under safeguards. India committed to placing all future civil power and breeder reactors under safeguards.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#6d)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Indian Separation Plan**

**Question:**

Secretary Rice, in November 2005, U/S Joseph stated that “We have sought India’s curtailment of fissile material production but have not reached agreement on this issue.” Prior to the President’s March visit to India, experts who testified before Congress stated that they believed you were seeking to ensure that India’s breeder reactors were placed under safeguards in order to establish an “effective” but not explicit cap on Indian fissile material production.

- (d) Why does the IAEA list the prototype fast breeder reactor as a civilian power reactor in its Power Reactor Information System database?

**Answer:**

We cannot speak for the IAEA. We note, however, that this may be a matter of semantics. Breeder reactors are neither intrinsically military nor civil. The IAEA’s Power Reactor Information System is a database of nuclear power plants around the world, whether they are under construction, in operation, or shut down. The Prototype Fast Breeder Reactor is included in the database, as it could generate up to 500 megawatts of electric power. The IAEA’s website lists the Prototype Fast Breeder Reactor as a “power plant,” but not as “civil.” The IAEA’s characterization would have no legal

bearing, in any case, on India's decision on how it chooses to characterize the reactor for purposes of its separation plan.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#6e)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Indian Separation Plan**

**Question:**

Secretary Rice, in November 2005, U/S Joseph stated that “We have sought India’s curtailment of fissile material production but have not reached agreement on this issue.” Prior to the President’s March visit to India, experts who testified before Congress stated that they believed you were seeking to ensure that India’s breeder reactors were placed under safeguards in order to establish an “effective” but not explicit cap on Indian fissile material production.

- (e) How many breeder reactors, and of which type, does India plan to build in the future?

**Answer:**

We cannot speak for the Government of India, of course, but in our discussions Indian officials indicated that they may build an additional four breeder reactors. India committed, in its separation plan of March 2006, to place under IAEA safeguards all future civil breeder and civil thermal reactors. While India retains the sovereign right to determine whether future indigenous reactors serve a civil or military function – as it does today – neither we nor our international partners will cooperate with non-civil or non-safeguarded facilities. As such, all externally-supplied reactors and

other controlled technologies will necessarily be civil and subject to IAEA safeguards.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#1)  
Senate Foreign Relations Committee  
April 5, 2006**

**Nuclear Suppliers Group (NSG) Guidelines Proposal**

**Question:**

A publicly-available version of the Department's draft NSG decision, which was circulated at the NSG Experts Meeting in Vienna, Austria, last March, states

*Notwithstanding paragraphs 4(a), 4(b) and 4(c), INFCIRC/254/Part 1 as revised, Participating Governments may transfer trigger list items and/or related technology to the safeguarded civil nuclear facilities in India (a State not party, and never having been a party, to the NPT) as long as the participating Government intending to make the transfer is satisfied that India continues to fully meet all of the aforementioned nonproliferation and safeguards commitments, and all other requirements of the NSG Guidelines.*

Does the notwithstanding of paragraphs 4(a), 4(b), and 4(c) of INFCIRC/254 Part 1 mean that as long as any Participating Government of the NSG is satisfied that India is meeting the criteria in the Administration's proposed language, they can export any trigger list items they wish to India?

**Answer:**

The Administration's proposed language envisions that, after a consensus decision is reached by the NSG to accommodate civil nuclear cooperation with India, it will be up to each supplier to satisfy itself that India is continuing to meet its various nonproliferation and safeguards commitments. If a supplier has a concern that the criteria are not being met,

that supplier would be expected to raise the issue in the NSG. In addition, the other provisions of the NSG Guidelines would continue to apply, and NSG Participating Governments would need to take those into account in considering any possible Trigger List exports.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#2)  
Senate Foreign Relations Committee  
April 5, 2006**

**Nuclear Suppliers Group (NSG) Guidelines Proposal**

**Question:**

What consultation would apply before such exports would be made by Participating Governments, either bilaterally or within the NSG?

**Answer:**

The NSG Guidelines call for consultations among Participating Governments as appropriate in certain circumstances, either on a bilateral or multilateral basis, regarding implementation of the Guidelines and specifically in “sensitive cases.”

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#3)  
Senate Foreign Relations Committee  
April 5, 2006**

**Nuclear Suppliers Group (NSG) Guidelines Proposal**

**Question:**

What are the "other requirements" of the NSG Guidelines that would apply to India that are referenced in the draft decision?

**Answer:**

The exception we have discussed relates to the full-scope safeguards requirement of the NSG Guidelines. Transfers to India would still have to meet all the other requirements of the NSG Guidelines, including:

- Formal recipient government assurances "explicitly excluding uses of any nuclear transfer which would result in any nuclear explosive device";
- Effective physical protection of all nuclear materials and facilities to prevent unauthorized use and handling;
- Transfer of trigger list items or related technology only when covered by IAEA safeguards, with duration and coverage provisions in conformity with IAEA document GOV/1621 (i.e., safeguards in perpetuity);

- Restraint in transferring to India sensitive facilities, technology, and material usable for nuclear weapons or other nuclear explosive devices (including enrichment and reprocessing facilities, equipment or technology);
- Government assurances that any retransfer of a Trigger List item or any item derived from the transferred Trigger List item would be subject to the same conditions and assurances as the original transfer.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#4)  
Senate Foreign Relations Committee  
April 5, 2006**

**Nuclear Suppliers Group (NSG) Guidelines Proposal**

**Question:**

What information does the Administration have regarding the views of the Russian Federation and the People's Republic of China concerning the draft NSG decision?

**Answer:**

The Russian Government supports the Initiative. China has not yet declared a formal position. Since NSG deliberations are generally of a confidential nature, we would be happy to brief the Committee in more detail in an appropriate setting on our discussions with NSG partners, including the Russian Federation and the People's Republic of China, regarding the U.S. proposal to accommodate civil nuclear cooperation with India.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#5)  
Senate Foreign Relations Committee  
April 5, 2006**

**Nuclear Suppliers Group (NSG) Guidelines Proposal**

**Question:**

Do you anticipate that China might seek additional reactor exports to Pakistan as a result of the US-India nuclear initiative and the proposed exception to the NSG Guidelines you are seeking for India?

**Answer:**

While occasional news articles have speculated in this respect, we are not aware at this time of any plans on the part of China to seek additional reactor exports to Pakistan.

China became a party to the Nuclear Non-Proliferation Treaty in 1992; it is obligated under Article I not in any way to assist, encourage, or induce any non-nuclear-weapon state to manufacture or acquire nuclear weapons. China pledged in 1996 not to provide assistance to any unsafeguarded nuclear facilities in any country. As part of its joining the Nuclear Suppliers Group (NSG) in 2004, China disclosed its intention to continue cooperation with Pakistan under the grandfathering exception to the NSG Guideline provisions requiring full-scope safeguards as a condition of nuclear supply. This cooperation would include life-time support and fuel

supply for the safeguarded Chasma I and II nuclear power plants, supply of heavy water and operational safety service to the safeguarded Karachi nuclear power plant, and supply of fuel and operational safety service to the two safeguarded research reactors at PINSTECH. As a member of the NSG, China has pledged – and is expected – to abide by the NSG Guidelines on the transfers of nuclear equipment, technology, and material.

If China did seek to provide additional reactors to Pakistan, it would need NSG accommodation. The NSG operates by consensus, so China would need the support of all other participating governments to proceed. We do not believe that the 45 member states of the Nuclear Suppliers Group would agree to such an accommodation, and we do not support such an initiative with Pakistan.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#1)  
Senate Foreign Relations Committee  
April 5, 2006**

**Enrichment and Reprocessing Technology**

**Question:**

Secretary Rice, the Administration has been rightly concerned about the proliferation of enrichment and reprocessing technology. The President's February 2004 NDU speech demonstrated the high priority he places on this issue. India, as part of its Joint Statement commitments, has stated that it supports "international efforts to prevent the spread of enrichment and reprocessing technology."

Will India not export enrichment and reprocessing technology to any state without a functioning, full-scale enrichment or reprocessing capability?

**Answer:**

As part of the U.S.-India Civil Nuclear Cooperation Initiative, India has committed to refrain from the transfer of enrichment and reprocessing technology to states that do not already have them. India also committed to support international efforts to limit the spread of these technologies.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#2)  
Senate Foreign Relations Committee  
April 5, 2006**

**Enrichment and Reprocessing Technology**

**Question:**

Why does the draft NSG decision circulated last month not limit the export of enrichment and reprocessing technology to India? Have all NSG Participating Governments already agreed not to transfer enrichment, reprocessing and related technology to India, in particular the Russian Federation?

**Answer:**

The transfer of enrichment and reprocessing equipment and technology is already addressed in the NSG Guidelines, INFCIRC/254/Rev.7/Part 1. Therefore, it was not deemed necessary for the proposed resolution to also address the matter. In this context, we have also indicated to our NSG partners that we do not intend to supply enrichment and reprocessing technologies. Our bilateral agreement for peaceful nuclear cooperation will not permit such transfers to be made under it.

There has been no discussion of possible transfers of enrichment and reprocessing technology to India or any Indian requests for such technology. NSG Participating Governments have made clear that they currently are not

contemplating any new transfers of enrichment and reprocessing and in fact have been considering strengthening controls over such transfers.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#1a/b)  
Senate Foreign Relations Committee  
April 5, 2006**

**Additional Nonproliferation Measures**

**Question:**

Secretary Rice, in November 2005, U/S Joseph stated that “In our ongoing dialogues, we strongly encourage India to take additional steps to strengthen nonproliferation, such as joining PSI, and harmonizing its national control lists with those of the Australia Group [AG] and the Wassenaar Arrangement [WA].”

On December 30, 2005, the Administration sanctioned Sabero Organic Chemicals Gujarat Limited of India and Sandhya Organic Chemicals PVT Limited, also of India, under the authority of the Iran and Syria Nonproliferation Act of 2000 (PL 106-178) for the transfer to Iran of equipment and technology on the Australia Group list.

- (a) What is the status of India’s consideration of PSI membership?
- (b) What are the policy and legal reasons India has given for not becoming a PSI participant.

**Answer:**

India has stated that its participation remains under consideration.

India committed in 2005 to participate in the PSI if it was able to join the Core Group of PSI participants that had developed and agreed to the PSI Statement of Principles, or if the Core Group was disbanded. In the summer of 2005, the United States and its partners in the Core Group agreed that the

Core Group had served an important function in the process of starting up the PSI, but was no longer necessary and so was disbanded.

More recently, India has linked its decision on PSI participation to its concerns with recently agreed amendments to the Convention on the Suppression of Unlawful Acts at Sea (the SUA Convention).

The United States position is that endorsement of the PSI Statement of Interdiction Principles is a political commitment carrying no legal rights or obligations. Therefore, the United States does not accept India's linkage of the SUA Convention to the PSI. As the PSI is a voluntary initiative, India is free to choose to participate or not participate. We continue to discuss this issue with India and encourage India's participation.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#1c)  
Senate Foreign Relations Committee  
April 5, 2006**

**Additional Nonproliferation Measures**

**Question:**

Secretary Rice, in November 2005, U/S Joseph stated that “In our ongoing dialogues, we strongly encourage India to take additional steps to strengthen nonproliferation, such as joining PSI, and harmonizing its national control lists with those of the Australia Group [AG] and the Wassenaar Arrangement [WA].”

On December 30, 2005, the Administration sanctioned Sabero Organic Chemicals Gujarat Limited of India and Sandhya Organic Chemicals PVT Limited, also of India, under the authority of the Iran and Syria Nonproliferation Act of 2000 (PL 106-178) for the transfer to Iran of equipment and technology on the Australia Group list.

- (c) Has India decided to become an adherent to either the WA or the AG (including through harmonizing its export control lists with those of the AG and the WA), and if so, will India announce this decision publicly, and if not, what are India’s legal and policy reasons for not joining or adhering to them?

**Answer:**

We have discussed with India the importance of it harmonizing its control lists with those of the Australia Group and Wassenaar Arrangement. To date, we have not received an official announcement by the Indian Government of a decision to harmonize its control lists or to unilaterally

adhere to these regimes. We continue to discuss these issues with the Indian Government in the context of our bilateral discussions.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#1d)  
Senate Foreign Relations Committee  
April 5, 2006**

**Additional Nonproliferation Measures**

**Question:**

Secretary Rice, in November 2005, U/S Joseph stated that “In our ongoing dialogues, we strongly encourage India to take additional steps to strengthen nonproliferation, such as joining PSI, and harmonizing its national control lists with those of the Australia Group [AG] and the Wassenaar Arrangement [WA].”

On December 30, 2005, the Administration sanctioned Sabero Organic Chemicals Gujarat Limited of India and Sandhya Organic Chemicals PVT Limited, also of India, under the authority of the Iran and Syria Nonproliferation Act of 2000 (PL 106-178) for the transfer to Iran of equipment and technology on the Australia Group list.

- (d) Why will India not adopt controls on items on the control list of the AG?

**Answer:**

India has long argued that it has sufficient controls since its national export control list – the Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) List – is in line with the standards of the Chemical Weapons Convention (CWC), to which India is a party. We have discussed with India the importance of controlling the full range of chemicals, agents, toxins, and equipment in line with the Australia Group (AG).

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#2)  
Senate Foreign Relations Committee  
April 5, 2006**

**Additional Nonproliferation Measures**

**Question:**

Does India's adherence to the Missile Technology Control Regime (MTCR) mean that it will be considered an "adherent" for the purposes of Section 73 of the Arms Export Control Act, such that missile sanctions would generally not apply in the future to India or to countries which sell missile technology to India?

**Answer:**

India would not be considered an "MTCR Adherent" as defined under Section 73 of the Arms Export Control Act (also referred to as the missile sanctions law). Rather, as part of this Initiative, India has committed to unilaterally adhere to the Missile Technology Control Regime (MTCR) Guidelines. The missile sanctions law would generally still apply to a "unilateral adherent" to the MTCR.

Unilateral adherence to the MTCR Guidelines means that a country makes a unilateral political commitment to abide by the Guidelines and Annex of the MTCR. In particular, an MTCR unilateral adherent commits to control exports of missile-related equipment and technology according the MTCR Guidelines, including any subsequent changes to the MTCR

Guidelines and Annex. *Inter alia*, this means that MTCR unilateral adherent countries need to have in place laws and regulations that permit them to control the export of MTCR Annex equipment and technology consistent with the MTCR Guidelines.

An “MTCR Adherent” is a specially defined status in terms of Section 73 of the Arms Export Control Act (also referred to as the missile sanctions law). An “MTCR Adherent,” as defined in Section 73 of the missile sanctions law, is a country that “participates” in the MTCR or that, “pursuant to an international understanding to which the United States is a party, controls MTCR equipment and technology in accordance with the criteria and standards set forth in the MTCR.” India’s “unilateral adherence” to the MTCR would not meet this requirement.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#1)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Legislative Proposal**

**Question:**

Secretary Rice, in November 2005, U/S Joseph stated that “the Administration prefers stand-alone, India-specific legislation, but could envision alternatives as well.” What would be some of the alternatives you would envision if they were not specific to India?

**Answer:**

At the time Under Secretary Joseph testified, the Administration had also considered alternatives that were criteria-based or that amended the Atomic Energy Act more broadly. Based on our assessment, and following consultations with Congress, we believe that the India-specific approach embodied in S.2429 would be most appropriate.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#2)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Legislative Proposal**

**Question:**

Why did the Administration decide to ask Congress to except India from certain provisions of the Atomic Energy Act of 1954 (AEA) instead of using the existing authority to exempt a future Peaceful Nuclear Cooperative Agreement with India from the requirements of Section 123.1(1)-(9) of the AEA?

**Answer:**

The objectives of the legislation include (1) to be able to treat nuclear cooperation with India similar to nuclear cooperation with various other trading partners and (2) to bring Congress into the process at the front end rather than only at the back end.

To achieve the first objective, we are seeking a change to Section 128 so that future nuclear exports to India will not be subject to annual congressional review. Without the change, this provision would risk disrupting nuclear commerce with India and, in addition, might put U.S. exporters at a competitive disadvantage.

The second objective takes into account the difficulty of putting into place all the pieces necessary for U.S.-India nuclear cooperation –

particularly, the U.S.-India agreement for peaceful nuclear cooperation, the India-IAEA Safeguards Agreement, and Nuclear Suppliers Group action to accommodate nuclear trade with India – without knowing whether Congress, in the end, would support the Initiative and vote affirmatively to approve the agreement for peaceful nuclear cooperation. We believe it is important that Congress participate as a partner early in the process.

An additional factor involves the exception/waiver standard under Sections 123, 128, and 129 of the AEA. The existing standard is a determination by the Executive Branch that failure to make the proposed exception/waiver would be “seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security.” In our view, the decision to facilitate nuclear cooperation with India should be based instead on the nonproliferation measures that India committed to in the Joint Statement, which are reflected in the required Presidential determination under subsection 1(b) of S.2429.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#3)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Legislative Proposal**

**Question:**

Why did the Administration decide to ask Congress to allow the President to waive the application of Sections 128 and 129 of AEA with respect to India instead of using the existing waiver authorities available to the President in both Sections 128 and 129?

**Answer:**

As noted in the previous answer, Section 128 would require congressional review of the first license in each 12-month period after waiver of the full-scope safeguards requirement of that Section; India would not be on the same footing as other cooperative partners, and U.S. exporters to India could be disadvantaged.

Also as noted in the previous answer, we believe that waivers under Sections 128 and 129 should be based on the India-specific determination in subsection 1(b) of S.2429 rather than on the generic standard in current law.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#4)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Legislative Proposal**

**Question:**

Please explain how any license under 10 CFR Part 110 and 10 CFR Part 810 would be considered, evaluated, coordinated, and if applicable reported to Congress under existing law and under the Administration's proposed amendment to the AEA for India (as introduced in S.2429) with respect to export to India.

**Answer:**

The Nuclear Regulatory Commission (NRC) transmits applications for exports of nuclear facilities and for the initial exports of source or special nuclear material for use as reactor fuel under 10 CFR Part 110 to the Department of State, which is responsible for coordinating Executive Branch Agency (Departments of Commerce, Defense, Energy, and State) reviews of such applications in accordance with the Procedures Established Pursuant to the Nuclear Non-Proliferation Act of 1978, originally published in the Federal Register June 7, 1978, and subsequently amended (the "Procedures"). The Executive Branch is asked to provide the NRC with its judgment as to whether the proposed export would be inimical to the "common defense and security," to confirm that the proposed export will be

subject to the terms of an agreement for peaceful nuclear cooperation, and to address the extent to which the applicable export criteria in Section 110.42 are met, as well as the extent to which the recipient country or group of countries has adhered to the provisions of the applicable agreement for peaceful nuclear cooperation.

In reviewing an application for a license to export nuclear facilities or materials, the Executive Branch asks the recipient government to provide assurances confirming that upon receipt the export will be subject to the terms and conditions of a Section 123 agreement for peaceful nuclear cooperation between the U.S. and the recipient country, the ultimate consignee and any intermediate consignee identified in the license application are authorized to receive the export, and appropriate physical security measures will be applied to protect the export.

Applications requiring longer than 60 days for Executive Branch review would be reported to the Congress in accordance with the provisions of Section 126 of the AEA. In addition, Section 1523 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, as amended, requires the President to notify the Congress of nuclear exports to non-NATO countries known to have detonated a nuclear explosive device. Non-NATO countries that have detonated nuclear explosive devices are: China, India, Pakistan, and Russia. The President has delegated this

responsibility to the Secretary of State, who in turn has delegated the responsibility to the Under Secretary for Political Affairs.

If, after receiving the Executive Branch judgment, the NRC has not completed action on a license application within 60 days, it must inform the applicant in writing of the reason for delay and, as appropriate, provide follow-up reports. The NRC will issue an export license if it has been notified by the Department of State that it is the judgment of the Executive Branch that the proposed export will not be “inimical to the common defense and security”; and finds, based upon a reasonable judgment of the assurances provided and other information available to the Federal government, that the applicable statutory criteria or their equivalent are met.

If, after receiving the Executive Branch judgment, the Commission does not issue the license requested on a timely basis because it is unable to make the statutory determinations required, the Commission will publicly issue a decision to that effect and will submit the license application to the President. The Commission will deny any export license application for which the Executive Branch judgment does not recommend approval.

The proposed legislation would change this process as Section 110.42(a)(6) currently requires full-scope safeguards as a condition of issuing a license for export to a non-nuclear weapon state, unless waived by the President, in which case the provisions of Section 128 regarding

congressional review would apply. The proposed legislation would allow for NRC-licensed exports to India notwithstanding the absence of full-scope safeguards and without triggering the congressional review requirements of Section 128. It would also permit the issuance of a license notwithstanding the provisions of 10 CFR 110.46, which would otherwise bar issuance of a license to a country found by the President to have detonated a nuclear explosive device, unless the President has waived the corresponding provision of Section 129 of the AEA.

In accordance with 10 CFR Part 810 and the Procedures, an application to the Department of Energy for authorization to transfer nuclear technology under 10 CFR 810 (Section 57b of the AEA) may be approved by the Secretary of Energy if he determines, with the concurrence of the Department of State and after consultation with the Departments of Commerce and Defense and the Nuclear Regulatory Commission, that the activity will not be inimical to the interests of the United States. In making this determination, the Secretary of Energy must take into account a number of factors, including: (1) the nonproliferation obligations entered into by the recipient government, including the NPT and safeguards agreements with the IAEA; (2) whether the country has a Section 123 agreement for peaceful nuclear cooperation with the U.S.; and (3) recipient government assurances confirming no nuclear explosive use and the right of U.S. Government prior

consent to any retransfer of the technology or items produced through the use of that technology.

One of the factors that the Secretary of Energy is directed to consider in determining whether to grant a part 810 authorization is whether the recipient country has full-scope safeguards, but that criterion is not mandatory for the issuance of an authorization (except to the extent required pursuant to Section 128 in the case of sensitive nuclear technology). The proposed legislation would not affect consideration, evaluation, coordination, or reporting of DOE authorizations under 10 CFR part 810 with respect to the range of cooperation provided for under the proposed agreement for nuclear cooperation. To the extent that an authorization under Part 810 involved sensitive nuclear technology (SNT), the proposed legislation (unlike current law) would not require full-scope safeguards as a condition of supply. However, the proposed agreement for peaceful nuclear cooperation will not provide for exports of SNT; the agreement would have to be amended (and the amendment submitted to Congress for review) to allow for such exports.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#5)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Legislative Proposal**

**Question:**

What effect would the provisions of S.2429 have on the requirements of Sections 126 and 127 of the AEA?

**Answer:**

Section 126 establishes procedures for licensing nuclear exports.  
Section 127 establishes nuclear export criteria that mirror some of the elements required in an agreement for peaceful nuclear cooperation under Section 123. The provisions in S.2429 would not alter these requirements.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#6)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Legislative Proposal**

**Question:**

What effect would the provisions of S.2429 have on the Congressional review requirements of Section 130 of the AEA?

**Answer:**

Section 130 establishes the congressional review procedures with respect to submissions by the President under Sections 123, 126a.(2), 126b.(2), 128b., 129, 131a.(3), and 131f.(1)(A). Section 130 would be affected by the provisions of S.2429 in that it would not apply to Presidential actions with respect to India under Sections 128b. and 129; the provisions of the proposed legislation would govern. (Note that both Section 128b. and Section 129 currently provide for congressional disapproval of the President's action by concurrent resolution. In view of the Supreme Court's decision in the Chadha case, Congress would have to enact new legislation to disapprove the President's actions under Sections 128b. and 129; in that sense, the situation is the same under current procedures as it would be under S.2429.)

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#7)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Legislative Proposal**

**Question:**

What effect would the provisions of S.2429 have on the requirements of Section 131 of the AEA?

**Answer:**

Section 131 establishes the requirements relating to subsequent arrangements (as that term is defined in that Section). In particular, alterations in form or content – including reprocessing – of nuclear material subject to the agreement would require consent through a subsequent arrangement. The provisions in S.2429 would not alter these requirements, with one possible exception. Paragraph 131a.(4) provides that “all other statutory requirements under other Sections of [the AEA] for the approval or conduct of any arrangement subject to this subsection” must be satisfied before the subsequent arrangement may take effect. S.2429 would affect this provision to the extent that it might otherwise require that Sections 123 or 128 (as set forth in current law) must be satisfied for a subsequent arrangement with India.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#8)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Legislative Proposal**

**Question:**

What effect would the provisions of S.2429 have on the preparation of a Nuclear Proliferation Assessment Statement with respect to a peaceful nuclear cooperative agreement with India as required under Section 123 of the AEA?

**Answer:**

S.2429 would not affect the requirement for a Nuclear Proliferation Assessment Statement nor the preparation thereof.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#9)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Legislative Proposal**

**Question:**

Under S.2429, what would trigger termination of U.S.-Indian atomic energy cooperation or nuclear exports, and how do those circumstances compare with the existing statutory language regarding termination of nuclear exports under Section 129 of the AEA?

**Answer:**

Under S.2429, detonation of a nuclear explosive device by India would render ineffective any Presidential determination there under and, accordingly, any waiver of Section 129 of the AEA based on such determination. That detonation would also trigger the requirement under Section 129(1)(A) to terminate nuclear cooperation with India.

S.2429 would not change the various *grounds* in Section 129 that trigger the termination of nuclear cooperation with respect to India. It would, however, change the *standard* for waiving the application of the sanctions. Under current law, the waiver standard is “seriously prejudicial to the achievement of United States nonproliferation objectives or otherwise jeopardize the common defense and security.” Under S.2429, the standard would be based on the nonproliferation measures that India committed to in

the Joint Statement as reflected in the Presidential determination under subsection 1(b). In addition, as noted in the answer to question 6 above, the provisions of Section 129 and Section 130 regarding congressional review would not apply to a waiver under S.2429.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#10)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Legislative Proposal**

**Question:**

Would Sections 101 and 102 of the Arms Export Control Act apply to any agreement for cooperation in atomic energy with India under S.2429, and if so, how?

**Answer:**

The proposed legislation would not affect the application to India of Sections 101 and 102 of the Arms Export Control Act.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#11)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Legislative Proposal**

**Question:**

Under subsection (d) of S.2429, what effect would a Presidential determination that India has detonated a nuclear explosive device after the date of enactment have on

- (a) nuclear exports by the United States;
- (b) the nuclear cooperation agreement itself; and,
- (c) nuclear exports by other states?

**Answer:**

Nuclear exports from the United States to India would be terminated pursuant to Section 129(1)(A), unless waived by the President pursuant to the waiver standard in current law. This waiver would be subject to congressional review for 60 continuous session days.

The nuclear cooperation agreement would remain in effect as a matter of international law. However, as noted above, exports of nuclear equipment and material to India under that agreement would be prohibited under Section 129; any waiver of Section 129 based on a Presidential determination under S.2429 would no longer be effective. The U.S. would

also have the right to request the return of any nuclear material transferred to India under the terms of the nuclear cooperation agreement.

U.S. law would not affect nuclear exports by other states. Each state's response would presumably be governed by the terms of its domestic law and international obligations, its agreement for cooperation with India, any relevant actions by the NSG (if the state were a member), and its own policy judgment.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#12)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Legislative Proposal**

**Question:**

Under S.2429, if the President determines that India has detonated a nuclear explosive device after the date of enactment, his previous determination regarding the Section 123 agreement between the United States and India under Section (1)(b) “shall not be effective.” Do you interpret that language to mean that all U.S. licenses for the export to India of any items requiring a license under 10 CFR Part 110 and 10 CFR Part 810 would be suspended or terminated and that no new licenses would be granted, nor any previous licenses renewed, after the determination in Section (1)(d) is made?

**Answer:**

As previously noted, a detonation by India would trigger Section 129, which states that “no nuclear materials and equipment or sensitive nuclear technology shall be *exported* to . . . any non-nuclear weapon state that is found by the President to have . . . detonated a nuclear explosive device” (emphasis added). This prohibition on exports of “nuclear materials and equipment” and “sensitive nuclear technology” would necessitate suspension or revocation of NRC licenses and DOE authorizations (under 10 CFR Part 110 and 10 CFR Part 810, respectively) to the extent that the licenses or authorizations involved such exports (unless the authorized activity had already taken place).

The term “nuclear materials and equipment” is defined in the Nuclear Nonproliferation Act of 1978 (P.L. 95-242) to mean “source material, special nuclear material, production facilities, utilization facilities, and components, items or substances determined to have significance for nuclear explosive purposes pursuant to Section 109b. of the Atomic Energy Act.”

The term “sensitive nuclear technology” is defined in the Nuclear Nonproliferation Act to mean any information “which is important to the design, construction, fabrication, operation, or maintenance of a uranium enrichment or nuclear fuel reprocessing facility or a facility for the production of heavy water [but excluding Restricted Data].”

“Sensitive nuclear technology” could not be exported or imported under the proposed agreement for peaceful nuclear cooperation without an amendment.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#13)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Legislative Proposal**

**Question:**

What is the effect of including the phrase “notwithstanding any other provision of law” in Section 1(a) of S.2429 on other statutes such as the Iran and Syria Nonproliferation Act, Sections 101 and 102 of the Arms Export Control Act, or any other relevant U.S. statutes or Executive Orders that would terminate nuclear commerce or impose sanctions for proliferation activities?

**Answer:**

The phrase “notwithstanding any other provision of law” would affect the operation of other statutes or other provisions of the Atomic Energy Act *only* to the extent that such provisions would affect the modifications to Sections 123, 128, and 129 that are embodied in S.2429. Thus, if another law established “competing” modifications to the waiver standard for Sections 128 or 129, the modifications in S.2429 would apply “notwithstanding” that other law.

Accordingly, S.2429 would not have any effect on the operation of the Iran and Syria Nonproliferation Act, Sections 101 and 102 of the Arms Export Control Act, or other nonproliferation sanctions provisions (except of course Section 129).

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#14)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Legislative Proposal**

**Question:**

If the violations in Section 129 of the AEA, and the termination of nuclear commerce for such violations, are not to apply to any agreement for atomic energy cooperation with India, as the Administration's legislative proposal states in Section 1(a)(3) of S.2429, which penalties in other relevant laws would apply to atomic energy cooperation with India if India were to engage in activities that would terminate nuclear cooperation under Section 129? Specifically which other laws would terminate cooperation if India were to

- (a) Terminate or abrogate IAEA safeguards;
- (b) Materially violate a safeguard agreement with the IAEA;
- (c) Materially violate an agreement for cooperation with the United States as stipulated in Section 129(2)(A);
- (d) Assist, encourage, or induce any non-nuclear weapon state to engage in activities stipulated in Section 129(2)(B); and,
- (e) Engage in cooperation that would result in termination of exports as a result of India's having exported reprocessing technology to a non-nuclear weapon state, except under an evaluation and agreement with the United State, as specified in Section 129(2)(C)?

**Answer:**

As noted in the answer to question 9 above, S.2429 would not change the various *grounds* in Section 129 that trigger the termination of nuclear cooperation with respect to India, but rather would change the *standard* and *process* for waiving the application of the sanctions. Thus, Section 129 would still apply to nuclear exports to India under an agreement for peaceful

nuclear cooperation, and it would be within the discretion of the President whether to exercise the waiver authority in S.2429 (assuming he could make the requisite determinations and assuming no detonation after the date of enactment).

With respect to the specific elements of the question above:

- (a) The standard U.S. agreement for peaceful nuclear cooperation establishes a right to cease nuclear cooperation and seek the return of transferred items if the other party terminates or abrogates an IAEA safeguards agreement. The right of return is required by Section 123 under these circumstances. In addition, the Export-Import Bank Act provides for a cutoff of Ex-Im Bank programs in support of exports to a country that terminates or abrogates IAEA safeguards (Section 2(b)(4)).
- (b) The standard U.S. agreement for peaceful nuclear cooperation establishes a right to cease nuclear cooperation and seek the return of transferred items if the other party materially violates an IAEA safeguards agreement. In addition, the Export-Import Bank Act provides for a cutoff of Ex-Im Bank programs in support of exports to a country that materially violates an IAEA safeguards agreement (Section 2(b)(4)).

- (c) The standard U.S. agreement for peaceful nuclear cooperation establishes a right to cease nuclear cooperation and seek the return of transferred items if the other party does not comply with the central nonproliferation provisions of the agreement for cooperation. In addition, (1) the Export-Import Bank Act provides for a cutoff of Ex-Im Bank programs in support of exports to a country that materially violates any guarantee or other undertaking to the U.S. in an agreement for nuclear cooperation (Section 2(b)(4)); (2) Section 530 of the Foreign Relations Authorization Act (FY 1994-95) provides for the cutoff of certain assistance to any country that materially violates an agreement for cooperation (P.L. 103-236); and (3) Section 3(f) of the Arms Export Control Act prohibits sales or leases to a country that is in material breach of binding commitments to the U.S. under agreements concerning the nonproliferation of nuclear explosive devices.
- (d) The Export-Import Bank Act provides for a cutoff of Ex-Im Bank programs in support of exports to a country that willfully aids or abets a non-nuclear weapon state to acquire a nuclear explosive device or unsafeguarded special nuclear material (Section 2(b)(4)).

- (e) Section 102(a) of the Arms Export Control Act provides for a cutoff of certain assistance to a country that transfers reprocessing equipment, materials, or technology.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#15)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Legislative Proposal**

**Question:**

What standard would the Department use to evaluate the phrase “making satisfactory progress” in Section 1(b)(3) of S.2429?

**Answer:**

The Administration is seeking to have India sign an Additional Protocol with the IAEA prior to the initiation of civil nuclear cooperation, but does not expect an Additional Protocol to be signed prior to submitting the bilateral agreement for peaceful nuclear cooperation to the U.S. Congress. Under the language of paragraph 1(b)(3), it would be a judgment for the President whether the progress achieved by India and the IAEA in working out the terms of an Additional Protocol was satisfactory. This approach takes account of the fact that India’s Additional Protocol will necessarily be tailored to its safeguards agreement, and therefore is likely to be negotiated after that safeguards agreement. Subsequent preparations for implementation of an Additional Protocol may also take some time.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#16)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Legislative Proposal**

**Question:**

Why did the Administration not include a specified period of time in which the President would submit his subsequent determination under Section 1(d) of S.2429 to Congress after an Indian detonation?

**Answer:**

Provisions of this kind typically do not establish a deadline by which the President must make a determination. Depending on the circumstances, it may not be clear that a detonation has occurred, and thus there would be no clear beginning to the statutory time period. In addition, based on long-standing interpretations of provisions of this kind, if the facts demonstrated that an Indian detonation had occurred, the President would not have the discretion to avoid the legal consequences of a determination by simply refraining from making the determination.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#17)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Legislative Proposal**

**Question:**

Would the subsequent Presidential determination under Section 1(d) of S.2429 apply even if India insisted that such a detonation was a peaceful nuclear explosion?

**Answer:**

The President's determination under Section 1(d) addresses India's detonation of a "nuclear explosive device." This term is used in the NPT and U.S. law to encompass all nuclear explosions, including so-called "peaceful nuclear explosions."

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#18)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Legislative Proposal**

**Question:**

How would a subsequent Presidential determination under Section 1(d) of S.2429 be sent to Congress and to which Committees would it be sent - would it be a written determination?

**Answer:**

Section 1(d) does not specify. The determination would be notified to relevant agencies and published in the Federal Register for implementation purposes. This approach is consistent with Section 129 and other mandatory nonproliferation sanctions provisions, which do not require a report to Congress upon a determination being made, but rather require a report to Congress in the event of waiver (which would also be the case here, if the President waived under existing procedures of Sections 128 or 129).

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#19)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Legislative Proposal**

**Question:**

Are Sections 123.a(2), 128 and 129 the only Sections of the AEA that are implicated in U.S.-Indian atomic energy cooperation, and if they are not, which other Sections of the AEA will apply to US-Indian atomic energy cooperation?

**Answer:**

As described in the answers to previous questions, numerous provisions of the AEA apply or, under particular circumstances, might apply to U.S.-India civil nuclear cooperation in addition to Sections 123, 128, and 129. These provisions include Sections 53, 54a., 57, 64, 82, 103, 104, 109, 126, 127, 130, and 131, but could include other provisions of the AEA.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#20)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Legislative Proposal**

**Question:**

Secretary Rice, in November 2005, U/S Joseph stated that “We will also need to ensure that any cooperation is fully consistent with U.S. obligations under the NPT not to ‘in any way’ assist India’s nuclear weapons program, and with provisions of U.S. law.”

Could you please provide this Committee with a legal analysis that sets forth a detailed examination by the State Department establishing that nothing the Administration is undertaking regarding changes to U.S. law, an exception to the Nuclear Suppliers Group Guidelines for India, or any exports of nuclear material or reactors to India from the United States, or from other nations as a result of U.S. policy and legal changes for India, would in any way assist India’s nuclear weapons program or in any way break U.S. obligations under the NPT?

**Answer:**

Under this Initiative, all nuclear transfers from the United States to India will be subject to IAEA safeguards. These safeguards will be applied to any source or special nuclear material transferred to India and to any source or special nuclear “used in or produced through the use of” material or equipment transferred to India. The application of IAEA safeguards is designed to ensure that U.S.-origin nuclear items remain exclusively on the civil side of the Indian nuclear program and do not in any way contribute to

India's military nuclear program. Implementation of an Additional Protocol is designed to give further assurance of this.

Under Article I of the NPT, nuclear-weapon states such as the United States undertake, *inter alia*: “. . . not in any way to assist, encourage, or induce any non-nuclear weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices.” Under Article III(2) of the NPT, all state parties undertake not to provide certain nuclear material and equipment to any non-nuclear weapon state (which includes non-parties) for peaceful purposes unless the nuclear material will be subject to safeguards.

The NPT does not treat peaceful nuclear cooperation under safeguards as assisting a non-nuclear weapon state to manufacture nuclear weapons. Specifically, Article III(2) establishes the basis under which NPT parties *may* engage in nuclear cooperation with safeguarded facilities in countries that are not parties and do not have full-scope safeguards.

In *The Nuclear Non-Proliferation Treaty* (the leading treatise on the negotiation of the NPT), Mohamed Shaker reached the same conclusion: “Almost any kind of international nuclear assistance is potentially useful to a nuclear-weapon program. However, the application of safeguards to all peaceful nuclear assistance to non-nuclear weapon States, as required by

Article III, provides a means to establish and clarify the peaceful purposes of most international nuclear assistance.”

This conclusion is also supported by the practice of the parties to the NPT. The U.S. and Canada engaged in nuclear cooperation with India before and after the NPT entered into force. The supply of fuel under facility-specific (INFCIRC/66) safeguards agreements was understood to satisfy our obligations under the NPT. Even after India’s 1974 detonation, fuel was provided to India’s safeguarded Tarapur reactors by the United States, France, and Russia. Such fuel supply was understood to be consistent with the NPT. The Nuclear Suppliers Group did not make the political decision to adopt full-scope safeguards as a condition of supply until 1992, reflecting the fact that nuclear supply to a country without full-scope safeguards was not prohibited under the NPT.

The argument that foreign fuel supply could allow India to devote its domestic uranium substantially or even exclusively to its weapons program, should India so desire, does not change this legal conclusion. As previously noted, nothing in the NPT, its negotiating history, or the practice of the parties supports the notion that fuel supply to safeguarded reactors for peaceful purposes could be construed as “assisting in the manufacture of nuclear weapons” for purposes of Article I. Nuclear material and equipment

exported by the U.S. to safeguarded activities would not be involved in any stage of the process of manufacturing nuclear weapons.

In essence, nuclear cooperation under safeguards does not fundamentally differ from other forms of energy cooperation (*e.g.*, oil supply, clean coal technology, alternative fuels). All such energy assistance would arguably relieve India of its reliance on domestic uranium for energy production. Yet such energy assistance clearly could not be viewed as assisting India in the manufacture of nuclear weapons.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#21)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Legislative Proposal**

**Question:**

Secretary Rice, U/S Joseph stated in November 2005, that “Many of the specifics of required regulatory changes to implement full civil nuclear energy cooperation with India have yet to be determined by the Administration.” Additionally, he noted that “U.S. regulations that incorporate or reflect statutory language will need to be modified or waived in order to permit civil nuclear cooperation consistent with the Joint Statement, and will need to be addressed along with modification or waiver of the related statute.

Please provide the Committee with a coordinated, interagency examination of all regulatory changes the Administration would make to implement US-Indian atomic energy cooperation if its exception to provisions of the Atomic Energy Act, as introduced in S.2429, were enacted. Such examination should be particular with regard to any relevant portion of 10 CFR 110 and 810.

**Answer:**

In response to question 4 under the heading “The Legislative Proposal,” we noted that the proposed legislation would change the process of NRC licensing under 10 CFR 110.42(a)(6), which currently requires full-scope safeguards as a condition of issuing a license for export to a non-nuclear weapon state, unless waived by the President, in which case the provisions of Section 128 regarding congressional review would apply. The

NRC would presumably amend this regulation to reflect the new legislation. Similarly, depending on the final wording of the new legislation, the NRC might have to modify 10 CFR 110.46, which would otherwise bar issuance of a license to a country found by the President to have detonated a nuclear explosive device, unless the President has waived the corresponding provision of Section 129 of the AEA.

Also, as discussed in the answer to question 4 under the heading “The Legislative Proposal,” the consideration, evaluation, coordination and reporting of DOE authorizations under 10 CFR Part 810 would not be affected with respect to the range of cooperation provided for under the proposed agreement for nuclear cooperation. To the extent that an authorization under Part 810 involved sensitive nuclear technology (SNT), the proposed legislation (unlike current law) would not require full-scope safeguards as a condition of supply. However, the proposed agreement for peaceful nuclear cooperation will not provide for exports of SNT; the agreement would have to be amended (and the amendment submitted to Congress for review) to allow for such exports. Depending on the final wording of the new legislation, DOE might have to consider whether amendments to its regulations would be required.

The Department of Energy, the Nuclear Regulatory Commission, and the Department of Commerce would conduct a thorough review of their

regulations to determine whether any changes would be required if the proposed legislation became law.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#22a)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Legislative Proposal**

**Question:**

Secretary Rice, in November 2005, U/S Joseph stated that “once India develops a transparent and credible civil-military separation plan for its nuclear facilities and programs and begins to implement it, we will then seek appropriate legislative solutions.”

- (a) What additional steps toward implementation has the Government of India taken since tabling its Separation Plan?

**Answer:**

Since India’s separation plan was tabled in the Indian Parliament on March 7, 2006, the Indian Government has begun its implementation. During the week of April 3, the chairman of India’s Atomic Energy Commission, Dr. Anil Kakodkar, traveled to Vienna to begin informal discussions with the International Atomic Energy Agency (IAEA) on India’s safeguards agreement. While there, Dr. Kakodkar met with IAEA Director General Dr. Mohamed ElBaradei. In addition, we fully expect that India in the near future will both provide the IAEA with a detailed list of all civil facilities, along with anticipated timelines for the application of safeguards

to those facilities, and conduct extensive safeguards negotiations with the IAEA.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#22b)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Legislative Proposal**

**Question:**

Secretary Rice, in November 2005, U/S Joseph stated that “once India develops a transparent and credible civil-military separation plan for its nuclear facilities and programs and begins to implement it, we will then seek appropriate legislative solutions.”

- (b) What additional steps in respect of the Separation Plan need to be taken by India before its Separation Plan can be considered in force?

**Answer:**

To fully implement the separation plan, the Indian government will identify specific reactors to be offered for safeguards and provide a timeline for doing so. In addition, India will identify which upstream and downstream nuclear facilities it will declare to the IAEA as civil and offer for IAEA safeguards. Once the separation and declaration are complete, India must conclude and bring into force a safeguards agreement with the IAEA, as well as sign and adhere to an Additional Protocol.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#23)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Legislative Proposal**

**Question:**

Secretary Rice, some Administrative officials have stated that it would be “ideal” to have U.S. law adjusted before the Nuclear Suppliers Group Guidelines are changed. Why in your view, is it “ideal” to have U.S. law changed before NSG Guidelines are changed?

**Answer:**

For those countries that do not have domestic laws preventing nuclear commerce with India, the NSG Guidelines may constitute the only restrictions on the transfer of nuclear material and technology to that country. Enterprises engaged in various aspects of the nuclear industry in those countries would most likely be free to engage in nuclear commerce as soon as the NSG adopted a resolution allowing civil nuclear cooperation with India. If the NSG were to adopt such a resolution before the proposed U.S. legislation is enacted, U.S. businesses could be at a competitive disadvantage. Additionally, some NSG partners have indicated that they are looking to the U.S. for leadership on this issue and are not prepared to act before Congress indicates its intent.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#24)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Legislative Proposal**

**Question:**

Could you please furnish the Committee with an analysis of the extant laws of the Russian Federation, France and China that are comparable in respect of nuclear export controls, in particular whether such laws contain a requirement for full-scope safeguards similar to the U.S. requirement at Section 123.a(2) of the AEA?

**Answer:**

As Participating Governments of the Nuclear Suppliers Group (NSG), Russia, France, and China have each undertaken a political commitment that its national laws and regulations would be at least as stringent as the standards set forth in the NSG Guidelines and control lists. This includes the requirement for full-scope safeguards as a condition of supply to non-nuclear weapon states (as all states other than the NPT-defined nuclear weapon states are treated in this context). We have not compiled the laws of all NSG participants to determine how they satisfy this undertaking.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#1)  
Senate Foreign Relations Committee  
April 5, 2006**

**Assurances of Supply**

**Question:**

Secretary Rice, other than the United States, who would be the principal nations that are capable of selling India nuclear fuel, nuclear materials and reactor technology?

**Answer:**

The world's largest producers of uranium (outside the United States) are, in order, Canada, Australia, Kazakhstan, Russia, Namibia, Niger, Uzbekistan, Ukraine, and South Africa. All export uranium.

China, France, Germany, the Netherlands, Russia, and the UK are all capable of supplying uranium enrichment services. Japan also has significant uranium enrichment capability that it uses for its domestic market.

Belgium, Canada, France, Germany, Kazakhstan, Russia, Spain, Sweden, and the UK are the principal nuclear fuel exporters. Argentina, Brazil, Japan, and the Republic of Korea have significant nuclear fuel manufacturing capability that they use for their domestic markets.

France, Germany (in partnership with France), Canada, Russia, and China are all capable of supplying nuclear reactors. Japan and the Republic of Korea have significant reactor/component manufacturing capability, but have not yet supplied complete reactor systems, only reactor components. The Czech Republic also has a significant reactor/component manufacturing capability.

Any or all of the above countries could be major suppliers of nuclear material and equipment to India. Numerous other countries have limited supply capabilities. However, each would need to make its own national decision about whether supply to India would be consistent with domestic and international obligations.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#2)  
Senate Foreign Relations Committee  
April 5, 2006**

**Assurances of Supply**

**Question:**

Has the United States obtained for India assurances of fuel supply from other supplier nations? -- If so, which?

**Answer:**

The United States has not yet discussed fuel supply assurances for India's civil nuclear reactors with any third country. We believe that it is premature to do so at this time. Timely and effective Indian safeguards and Additional Protocol negotiations with the IAEA are important next steps.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#3)  
Senate Foreign Relations Committee  
April 5, 2006**

**Assurances of Supply**

**Question:**

Have all potential nuclear suppliers to India agreed to terminate the supply of fuel or reactors and related sensitive technology to India if it detonates a nuclear explosive device?

**Answer:**

Our interlocutors in the NSG have made it clear that their support for accommodating civil nuclear cooperation with India hinges upon India's successful implementation of its commitments in the July 2005 Joint Statement, including India's commitment to continue its moratorium on nuclear testing. We do not have the official views of potential nuclear suppliers regarding a termination of transfers of nuclear material, including fuel and technology, to India should India detonate a nuclear explosive device. However, we expect that there would be irresistible political pressure for NSG participants to terminate any transfers of nuclear material and technology to India should India detonate a nuclear explosive device.

Moreover, there is a provision in the NSG Guidelines calling for suppliers to meet and consult if a supplier believes there has been a violation

of the supplier/recipient understandings resulting from the Guidelines, particularly in the event of, among other things, an explosion of a nuclear device. India's 1998 nuclear tests prompted the NSG to meet in an extraordinary plenary for such consultations. The Guidelines further reference the possibility of a common response, which could include the termination of nuclear transfers.

We have made it clear to the Government of India that the Civil Nuclear Cooperation Initiative relies on India's commitment to continue its unilateral nuclear testing moratorium. This gives India clear economic and energy incentives not to test.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#1)  
Senate Foreign Relations Committee  
April 5, 2006**

**India's Safeguards Agreement**

**Question:**

Secretary Rice, in November 2005, U/S Joseph stated that

*Safeguards agreements are modeled after INFCIRC/153 (the NPT safeguards agreement) or INFCIRC/66 (The Agency's safeguards system predating the NPT). India will not likely sign a safeguards agreement based strictly on INFCIRC/153, as this would require safeguards on India's nuclear weapons program. NPT-acknowledged nuclear weapon states have so-called "voluntary" safeguards agreements that draw on INFCIRC/153 language, but do not obligate the IAEA to actually apply safeguards and do allow for the removal of facilities of material from safeguards. We heard from other states at the recent NSG meeting that they would not support a "voluntary offer" agreement as, in their view, it would be tantamount to granting de facto nuclear weapon state status to India. We have similarly indicated to India that we would not view such an arrangement as defensible from a nonproliferation standpoint. We therefore believe that the logical approach to formulating a safeguards agreement for India is to use INFCIRC/66, which is currently used at India's four safeguarded reactors. For the most part, INFCIRC/66 and INFCIRC/153 agreements result in very similar technical measures actually applied at nuclear facilities.*

Please clarify, with regard to INFCIRC/66 (presumably /Rev.2), where in that document does the requirement appear that once a facility is declared it must remain declared and under inspection in perpetuity?

**Answer:**

Unlike INFCIRC/153, the model safeguards agreement for non-nuclear weapon states under the NPT, INFCIRC/66/Rev.2 is not a model safeguards agreement. Rather, it is a general description of how safeguards are to apply to nuclear material and facilities under the IAEA safeguards system that predates the NPT. Therefore it does not contain every provision that may be included in a safeguards agreement. In particular, the scope and duration of safeguards are normally spelled out in the safeguards agreement.

The principle that safeguards should be applied in perpetuity in INFCIRC/66/Rev. 2 safeguards agreements was embodied in a Memorandum from the IAEA Director General to the IAEA Board of Governors in 1973 (IAEA GOV/1621). We expect any safeguards agreement India negotiates with the IAEA to be consistent with its pledge to place its civil nuclear facilities under safeguards in perpetuity. As Secretary Rice testified before the SFRC, “We’ve been very clear with the Indians that the permanence of the safeguard is permanence of the safeguards without condition.”

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#2)  
Senate Foreign Relations Committee  
April 5, 2006**

**India's Safeguards Agreement**

**Question:**

With regard to India's indigenous reactors that are not submitted to safeguards as a result of a project agreement, but rather voluntarily submitted, is there a requirement in INFCIRC/66 that safeguards must be applied in perpetuity to such reactors?

**Answer:**

As noted above, the scope and duration of safeguards are not set for the INFCIRC/66, but rather are normally spelled out in the safeguards agreements. In its separation plan, India has committed to safeguards in perpetuity. As Secretary Rice testified before the SFRC, "We've been very clear with the Indians that the permanence of the safeguard is permanence of the safeguards without condition."

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#3)  
Senate Foreign Relations Committee  
April 5, 2006**

**India's Safeguards Agreement**

**Question:**

What, in your view, does India mean when in its Separation Plan it states that the safeguards agreement will provide for “corrective measures that India may take to ensure uninterrupted operation of its civilian reactors in the event of disruption of foreign fuel supplies”?

**Answer:**

We cannot speak for the Government of India, of course; India will need to clarify its intent in this respect in its discussions with the IAEA. India has agreed to safeguards in perpetuity on its declared civil facilities and on all future civil reactors. Safeguards in perpetuity would also apply to nuclear material used or produced in those facilities. Thus, safeguards would continue to be required in a campaign mode on downstream facilities processing safeguarded material from declared civil facilities.

We have had only initial, conceptual discussions with India regarding the question of assured fuel supplies. We believe that India can be provided with the assurances it seeks for fuel supply consistent with safeguards in perpetuity.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#4)  
Senate Foreign Relations Committee  
April 5, 2006**

**India's Safeguards Agreement**

**Question:**

Would India be under any obligation, if it concluded an agreement with the IAEA using the INFCIRC/66 model, to keep safeguards on its eight indigenously built civil PHWRs in perpetuity?

**Answer:**

India has committed to place its civil nuclear facilities, including its eight indigenously built civil PHWRs, under safeguards in perpetuity.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#5)  
Senate Foreign Relations Committee  
April 5, 2006**

**India's Safeguards Agreement**

**Question:**

Would India's safeguards obligation apply only to foreign fuel supplied to its indigenously built PHWRs?

**Answer:**

India has committed to place its civil nuclear facilities under safeguards in perpetuity. Safeguards would apply to any fuel, indigenous or foreign, that is in a civil reactor at the point that safeguards go into effect for that facility.

In addition to India's unilateral safeguards commitment, any foreign-supplied fuel would be subject to safeguards by virtue of the supply arrangement for that material. Supplier states will require safeguards in perpetuity with respect to supplied items in order to satisfy the requirements of NPT Article III.2.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#6)  
Senate Foreign Relations Committee  
April 5, 2006**

**India's Safeguards Agreement**

**Question:**

If India stopped using foreign fuel in those reactors, would its envisioned safeguards, as outlined in its implementation document, impose an obligation to continue to apply safeguards on the reactors themselves?

**Answer:**

For the reasons described in answers above, safeguards would continue to be required on all declared civil nuclear facilities and on all nuclear material produced, processed, or used in those facilities.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#7)  
Senate Foreign Relations Committee  
April 5, 2006**

**India's Safeguards Agreement**

**Question:**

Generally, how are safeguards terminated under the provisions of INFCIRC/66/Rev.2?

**Answer:**

With respect to facilities and equipment covered by a safeguards agreement, in general it is the safeguards agreement, not INFCIRC/66, which specifies whether and how safeguards may be terminated. As noted above, INFCIRC/66 is not a model safeguards agreement, and its provisions apply to the extent they are incorporated into a particular safeguards agreement. The provisions for termination of safeguards on nuclear material are set forth in paragraphs 26-28 of INFCIRC/66/Rev.2. These provisions allow for safeguards to be terminated on material that is exported, consumed, diluted so that it is no longer usable, or practicably irrecoverable. These conditions are essentially the same as under a comprehensive safeguards agreement based on INFCIRC/153.

INFCIRC/66 also has some conditions that are unique to cases where the state is not subject to comprehensive safeguards. In particular, it allows

for placing under safeguards as a substitute material of at least the same quality and quantity that was not previously under safeguards, and for the termination of safeguards on the previously safeguarded material, if the IAEA agrees to such substitution. It also allows the withdrawal of material that was subject to safeguards only because it was used in a safeguarded nuclear facility; however, this does not apply to material that was produced while under safeguards.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#8)  
Senate Foreign Relations Committee  
April 5, 2006**

**India's Safeguards Agreement**

**Question:**

What, in your view, are the most important provisions that any Indian safeguards agreement and Additional Protocol with the IAEA must contain?

**Answer:**

India's safeguards agreement with the IAEA must require that safeguards be maintained with respect to all nuclear material and equipment supplied to India and any special nuclear material used in or produced through the use of such material and equipment. Further, it must satisfy India's commitment to place its civil nuclear facilities under IAEA safeguards in perpetuity. These provisions are essential to provide a strong assurance to the United States and its NSG partners that nuclear cooperation with India will not "in any way" assist India's nuclear weapons program and will not be improperly diverted to third parties.

Since India will have a military nuclear program that it does not declare to the IAEA, its Additional Protocol would differ from the Model Additional Protocol. Nevertheless, this Protocol should advance the IAEA's ability to track potential nuclear proliferation worldwide. In that regard,

reporting of exports listed in Annex II of the Model Additional Protocol would arguably be of greatest value. India has pledged to conclude an Additional Protocol with respect to its civil facilities, and the Model Additional Protocol has provisions that deal with the “sites” of nuclear facilities. India has also listed as civil a number of research and development and other facilities that would not normally be subject to safeguards, but could be subject to the reporting and access provisions of an Additional Protocol.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#9)  
Senate Foreign Relations Committee  
April 5, 2006**

**India's Safeguards Agreement**

**Question:**

What would be the frequency of inspections conducted in India by the IAEA under a safeguards agreement and Additional Protocol?

**Answer:**

A safeguards agreement usually does not specify the frequency of inspections, but rather sets limits on the number of routine inspections. The frequency of inspections at a particular facility is usually agreed in a separate "facility attachment." We expect the implementation of safeguards in India would be generally consistent with the implementation of safeguards on similar facilities in other countries.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#1a)  
Senate Foreign Relations Committee  
April 5, 2006**

**India's Fuel Cycle**

**Question:**

Secretary Rice. Last November, U/S Burns stated that

*Because of the current international restrictions on nuclear commerce with India, India's plan for its nuclear power sector seeks to provide for a 20-fold increase in nuclear-generated electricity by 2020 without reactors from foreign suppliers. In support of this objective, India's Department of Atomic Energy (DAE) has committed extensive resources to develop a three-stage nuclear fuel cycle, based on its plentiful domestic thorium reserves, that involves fast-breeder reactors, which could pose proliferation risks. Moreover, some specialists assess that such an approach would not prove cost-effective, and there are clear technical challenges to overcome.*

- (a) Has India decided to end, or expressed a desire to end, its pursuit of a three-stage fuel cycle?

**Answer:**

Only the Government of India can provide a definitive answer to the question of whether it has decided to end its pursuit of a three-stage fuel cycle. Although the concept was mentioned in India's separation plan, it has had less prominence in our discussions of civil nuclear cooperation.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#1b)  
Senate Foreign Relations Committee  
April 5, 2006**

**India's Fuel Cycle**

**Question:**

Secretary Rice. Last November, U/S Burns stated that

*Because of the current international restrictions on nuclear commerce with India, India's plan for its nuclear power sector seeks to provide for a 20-fold increase in nuclear-generated electricity by 2020 without reactors from foreign suppliers. In support of this objective, India's Department of Atomic Energy (DAE) has committed extensive resources to develop a three-stage nuclear fuel cycle, based on its plentiful domestic thorium reserves, that involves fast-breeder reactors, which could pose proliferation risks. Moreover, some specialists assess that such an approach would not prove cost-effective, and there are clear technical challenges to overcome.*

- (b) What are the "proliferation risks" posed by India's intended fuel cycle, in particular its breeder reactors?

**Answer:**

The use of thorium requires a complex fuel cycle, although its use as reactor fuel may produce less fissile material as a byproduct than does the use of uranium as a fuel.

To be useful as reactor fuel, thorium must be converted into U-233 in a breeder reactor. The fuel cycle requires considerable handling of fissile material in the various loading, unloading, and transfers associated with the

stages of the fuel cycle. Each time fissile material is handled, there is a risk of diversion.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#1c)  
Senate Foreign Relations Committee  
April 5, 2006**

**India's Fuel Cycle**

**Question:**

Secretary Rice. Last November, U/S Burns stated that

*Because of the current international restrictions on nuclear commerce with India, India's plan for its nuclear power sector seeks to provide for a 20-fold increase in nuclear-generated electricity by 2020 without reactors from foreign suppliers. In support of this objective, India's Department of Atomic Energy (DAE) has committed extensive resources to develop a three-stage nuclear fuel cycle, based on its plentiful domestic thorium reserves, that involves fast-breeder reactors, which could pose proliferation risks. Moreover, some specialists assess that such an approach would not prove cost-effective, and there are clear technical challenges to overcome.*

- (c) What are the proliferation risks associated with breeder reactor technology, generally?

**Answer:**

Unlike a typical commercial reactor, a breeder reactor creates more usable fuel (i.e., plutonium) than it uses. The production of plutonium and other fuels as a byproduct of the reactor's operation adds to the world net stock of potential fuel for a nuclear explosive device.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#1)  
Senate Foreign Relations Committee  
April 5, 2006**

**Heavy Water Exports/Production**

**Question:**

Last March, while on a visit to India, Commissioner Peter Lyons of the NRC is quoted as having said that “[The NRC] and [the Indian Atomic Energy Research Board] will have greater cooperation in the near future and this is important in the global market place reality and also when U.S. nuclear industry is exploring the options other than Light Water Reactors).”

Has the Administration determined whether or not heavy water could be exported to India from the United States?

**Answer:**

The U.S. does not foresee transferring heavy water production equipment or technology to India, and the draft bilateral peaceful nuclear cooperation agreement accordingly makes no provisions for such transfers.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#2)  
Senate Foreign Relations Committee  
April 5, 2006**

**Heavy Water Exports/Production**

**Question:**

Does the Administration contemplate allowing full participation in its Global Nuclear Energy Program (GNEP)?

**Answer:**

U.S. negotiators told India that India's decision not to designate its fast breeder reactors and associated fuel cycle research and development facilities as civil and place those facilities under IAEA safeguards would preclude our ability to collaborate on issues related to the fast burner reactors contemplated under GNEP at this time. If India places breeder reactors under safeguards in the future, the United States has indicated that, as appropriate, it is willing to explore potential areas for civil cooperation in this context.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#3)  
Senate Foreign Relations Committee  
April 5, 2006**

**Heavy Water Exports/Production**

**Question:**

Does the Administration contemplate authorizing the export to India from the United States of reactors other than LWRs—if so, of which type?

**Answer:**

The United States has no current plans to export any power reactors other than LWRs to any country.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#1a/b)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Nuclear Cooperative Agreement**

**Question:**

Secretary Rice, U/S Joseph previously stated that, regarding the Peaceful Nuclear Cooperation Agreement (PNCA) with India, it will not provide for full-scope safeguards, but rather “will allow for appropriate controls to help ensure that material or goods provided for civilian purposes remain within the civilian sector.”

- (a) Has the Administration prepared a draft text of a PNCA with India?
- (b) If so, could you furnish this Committee with a copy?

**Answer:**

The Administration has prepared a draft text of a proposed U.S.-India agreement for peaceful nuclear cooperation. It was conveyed to the Government of India by the American Embassy in New Delhi on March 16, 2006.

We have begun initial discussions with India on a bilateral agreement for peaceful nuclear cooperation. We have already briefed staff in detail on that agreement, and would be happy to arrange additional briefings for the Committee on the outlines of what is contained in the text. Texts of the Section 123 agreements with non-nuclear weapon states that are currently in

force and previously reviewed by Congress are illustrative of the content we are seeking in an agreement with India (with the exception of a provision for full-scope IAEA safeguards in India). Congress will have an opportunity to fully review the agreement once negotiations are complete and the agreement has been submitted for congressional review.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#c/d)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Nuclear Cooperative Agreement**

**Question:**

Secretary Rice, U/S Joseph previously stated that, regarding the Peaceful Nuclear Cooperation Agreement (PNCA) with India, it will not provide for full-scope safeguards, but rather “will allow for appropriate controls to help ensure that material or goods provided for civilian purposes remain within the civilian sector.”

- (c) Will the State Department prepare or issue a Circular 175 pursuant to 11 FAM 720 for a PNCA with India?
- (d) If so, could you furnish a copy of either the draft or final Circular 175 to this Committee?

**Answer:**

The Department of State prepared a Circular 175 memorandum requesting authority to negotiate an Atomic Energy Act Section 123 agreement with India and obtained the concurrence of other interested Executive Branch agencies and the Nuclear Regulatory Commission. Under Secretary of State Joseph, under authority delegated by the Secretary of State, approved the request for authority to negotiate on March 13, 2006.

We would be happy to brief the Committee or its staff on the matters addressed in the Circular 175 process, which relate directly to our current negotiations with India.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#1e)  
Senate Foreign Relations Committee  
April 5, 2006**

**The Nuclear Cooperative Agreement**

**Question:**

Secretary Rice, U/S Joseph previously stated that, regarding the Peaceful Nuclear Cooperation Agreement (PNCA) with India, it will not provide for full-scope safeguards, but rather “will allow for appropriate controls to help ensure that material or goods provided for civilian purposes remain within the civilian sector.”

- (e) What verification mechanisms would be included in the U.S.-India nuclear cooperative agreement? For example, would the United States be able to conduct any special verification visits at Indian facilities to which U.S. materials and technology had been exported?

**Answer:**

The Administration is seeking an agreement for peaceful nuclear cooperation with India that will provide for IAEA safeguards on all source or special nuclear material transferred by the United States to India and on any source or special nuclear material used in or produced through the use of material, equipment, or components so transferred. This provision will implement Section 123(a)(1) of the Atomic Energy Act (AEA) with respect to the content of the agreement and Section 127(1) of the AEA with respect

to U.S. exports pursuant to the agreement. It is also necessary if U.S. nuclear exports to India are to comply with U.S. obligations under the NPT.

In addition, in accordance with normal practice, the Administration is seeking a provision in the agreement for “fall-back” safeguards (i.e., direct verification by the United States of material, equipment and components subject to the agreement) if for any reason IAEA safeguards are not being applied to those items as provided in the agreement. This is necessary to satisfy the requirement in Section 123(a)(1) of the AEA that the safeguards provided for in the agreement will be maintained “so long as the material or equipment remains under the jurisdiction or control of the cooperating party, irrespective of the duration of other provisions of the agreement” (such as the provision for *IAEA* safeguards).

In general, the United States (like other NSG participants) relies upon IAEA inspections and monitoring. However, the United States would in fact be able to conduct “special verification visits” in the form of fall-back safeguards as required by the U.S.-India agreement for peaceful nuclear cooperation in the event that IAEA safeguards were not being applied.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#1)  
Senate Foreign Relations Committee  
April 5, 2006**

**IAEA Process**

**Question:**

Has India submitted a declaration to the IAEA of its civilian nuclear sites, facilities, locations and materials?

**Answer:**

India has not yet submitted such a declaration to the IAEA. We fully expect that India in the near future will provide the IAEA with a detailed list of all civil facilities, along with anticipated timelines for the application of safeguards to those facilities.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#2)  
Senate Foreign Relations Committee  
April 5, 2006**

**IAEA Process**

**Question:**

How long do you anticipate it will take for India to negotiate a declaration of civilian nuclear facilities, locations, information and materials, and its associated safeguards agreement and additional protocol, with the IAEA?

**Answer:**

We have encouraged India to conclude its safeguards agreement with the IAEA as soon as possible. India will submit its unilateral declaration of its civil facilities and programs as part of that process. India has conducted initial, informal safeguards discussions with the IAEA, but neither party has yet publicized a specific negotiation timeline. In our view, an “India-specific” safeguards agreement should generally conform with INFCIRC/66. Rev. 2. If it does so, we see no fundamental obstacle to concluding such an agreement in a reasonable timeframe.

India’s Additional Protocol will be appropriate to its safeguards agreement. In principle, the safeguards agreement and the Additional Protocol could be negotiated in parallel. However, in the interest of concluding the safeguards agreement as soon as possible, India may seek to

defer negotiation of an Additional Protocol until negotiations on the safeguards agreement are complete.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#3)  
Senate Foreign Relations Committee  
April 5, 2006**

**IAEA Process**

**Question:**

What are the steps with regard to both IAEA process and Indian law through which an Indian safeguards agreement and additional protocol with the IAEA would need to pass before they would be in force, and which of those steps have been completed?

**Answer:**

For both the safeguards agreement and the Additional Protocol, the process involves the following steps.

1. India and the IAEA Secretariat negotiate the agreement and/or protocol.
2. The IAEA Secretariat presents the agreement and/or protocol to the IAEA Board of Governors for approval. The United States has a designated seat on the 35-member Board, which normally decides such matters by consensus.
3. Once the Board approves, India and the IAEA may sign the agreement and/or protocol.
4. India must then complete its statutory and constitutional requirements for ratification or approval of the agreement and/or protocol. The agreement and/or protocol enters into force once India informs the IAEA that these requirements for entry into force have been met.

To date, India has conducted initial, informal consultations with the IAEA, but none of the steps listed above has yet been completed.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#4)  
Senate Foreign Relations Committee  
April 5, 2006**

**IAEA Process**

**Question:**

Would India's existing agreements with the IAEA (INFCIRC/211, INFCIRC/260, INFCIRC/360, INFCIRC/374, and INFCIRC/433) need to be changed or withdrawn when an Indian declaration, safeguards agreement and additional protocol are negotiated?

**Answer:**

There is no legal requirement to modify any of India's existing safeguards agreements in order for a new safeguards agreement and Additional Protocol to be negotiated and enter into force. However, it is not uncommon for one safeguards agreement to be suspended when another agreement of broader scope enters into force. In principle, the pre-existing safeguards agreement would in such a case not be terminated, but its implementation would be suspended as long as the new safeguards agreement is in force.

It is up to India and the IAEA whether, consistent with their international obligations, to seek to suspend other safeguards agreements in favor of a new, more comprehensive one. There may be advantages to having safeguards applied under the terms of a single agreement, particularly

in terms of administrative simplicity. However, many of India's existing safeguards agreements are safeguards transfer agreements. These are agreements between India and the IAEA that are linked to supply arrangements between various supplier states. They provide for the IAEA to apply safeguards with respect to a particular supply arrangement. In general, the consent of the supplier state would be required in order for any such agreement to be suspended.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#1a)  
Senate Foreign Relations Committee  
April 5, 2006**

**Recent Sanctions**

***Note:** Accompanying these QFRs is an unclassified report compiled by the Department of Commerce's Bureau of Industrial Security (DOC/BIS). The answers to the QFRs below do not include information regarding ongoing, open investigations due to the sensitivity of such investigations.*

**Question:**

Secretary Rice, on March 9, 2006, the Department of Commerce sanctioned two Indian persons for transactions with North Koreans. Please provide this Committee, in classified form if necessary, but in open form if possible, with an interagency-coordinated list regarding the following:

With respect to the Arms Export Control Act, the Export Administration Act, the International Emergency Economic Powers Act, and related legislation governing imports, exports, or improper financial transactions –

- (a) any criminal investigation involving India or any Indian entity or other person, including any Indian national, since May 1998, and whether each such investigation is open or closed, and if closed, the disposition; and

**Answer:**

Information on investigations by the Customs Department, due to the sensitivity of the information, will be provided separately.

DOC/BIS's Investigative Management System (IMS) indicates that during the period February 2003 to present, BIS opened 63 cases involving possible Export Administration Regulations (EAR) violations by U.S. firms

violating U.S. laws, with India as the ultimate consignee of the exported items. There are currently 33 open cases in IMS with India listed as the ultimate consignee.

Note: IMS was activated in February 2003. Although prior automated investigative files were migrated to IMS, data in these prior files cannot be queried electronically; thus, BIS cannot reliably report on case statistics prior to February 2003. The current review covers investigations input into IMS since February 2003 identified as involving possible illegal exports to India in violation of the EAR.

Regarding closed criminal cases:

- Materials International - On November 18, 2005, Fiber Materials Inc. of Maine; its wholly owned subsidiary, Materials International of Massachusetts; and the companies' two top officers, Walter Lachman and Maurice Subilia, were sentenced for conspiracy and export violations related to the unlicensed export to India of equipment used to manufacture carbon-carbon components with applications in ballistic missiles. All four defendants had been convicted of one count of violating the Export Administration Act (EAA) and one count of conspiracy by a federal trial jury on March 31, 1995. The equipment, a specially designed control panel for operation of a hot

isostatic press used to produce carbon-carbon items, was exported to India's Defense Research Development Laboratory (DRDL), the defense laboratory developing India's principal nuclear-capable ballistic missile, the Agni. Lachman was sentenced to three years probation, the first year of which is to be spent in home detention. Subilia was sentenced to three years probation, the first six months of which was to be spent in community confinement to be followed by one year of home detention. A criminal fine of \$250,000 was imposed on Lachman, Subilia, and Fiber Materials; no fine was imposed on Materials International because it is a wholly-owned subsidiary of Fiber Materials. OEE and Immigration and Customs Enforcement (ICE) jointly conducted this investigation.

- Berkeley Nucleonics - On June 6, 2004, BNC Corp. of San Rafael, California (previously Berkeley Nucleonics Corporation) was sentenced to five years probation and a \$300,000 criminal fine for illegally exporting pulse generators to two entities in India without required export licenses. The end-users were listed on BIS's entity list for nuclear nonproliferation reasons. Two former employees of BNC, Richard Hamilton and Vincent Delfino, were convicted in December 2003, for their role in these exports. Each was sentenced to two years probation, a \$1,000 fine, and 100 hours of community

service, and was prohibited from engaging in or facilitating export transactions. BIS assessed BNC a \$55,000 administrative penalty and a five-year suspended denial of export privileges as part of an agreement with BNC to settle charges related to these unlicensed exports.

- DirecTV/Hughes Network Systems – in 2005, DirecTV/Hughes Network Systems entered into a consent agreement with the Department of State to settle alleged violations of the International Trafficking in Arms Regulations related to the unauthorized export of U.S. Military List hardware and services to end users in a number of countries, including India.
- Multigen Paradigm – in 2003, Multigen Paradigm entered into a consent agreement with the Department of State to settle alleged violations of the International Trafficking in Arms Regulations related to unauthorized exports to a number of countries, including India.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#1b)  
Senate Foreign Relations Committee  
April 5, 2006**

**Recent Sanctions**

***Note:** Accompanying these QFRs is an unclassified report compiled by the Department of Commerce's Bureau of Industrial Security (DOC/BIS). The answers to the QFRs below do not include information regarding ongoing, open investigations due to the sensitivity of such investigations.*

**Question:**

Secretary Rice, on March 9, 2006, the Department of Commerce sanctioned two Indian persons for transactions with North Koreans. Please provide this Committee, in classified form if necessary, but in open form if possible, with an interagency-coordinated list regarding the following:

With respect to the Arms Export Control Act, the Export Administration Act, the International Emergency Economic Powers Act, and related legislation governing imports, exports, or improper financial transactions –

- (b) any civil or administration investigation involving India or any Indian entity or other person, including any Indian national, since May 1998, and whether each such investigation is open or closed, and if closed, the disposition

**Answer:**

Information on investigations by the Customs Department, due to the sensitivity of the information, will be provided separately.

The following are administrative investigations conducted by DOC/BIS since February 2003 identified as involving possible illegal

exports to India in violation of the EAR. (Note: As noted above, Commerce could only report on case statistics prior to February 2003.)

- State Bank of India – In 2003, the Department of the Treasury’s Office of Foreign Assets Control imposed a civil penalty in the amount of \$5,500 on the State Bank of India, New York for a funds transfer made in violation of Executive Order 13121 of April 30, 1999. E.O. 13121, issued pursuant to IEEPA, imposed sanctions on the Federal Republic of Yugoslavia as a result of the humanitarian crisis in Kosovo.
- Orcas International - On March 2, 2006, Assistant Secretary Darryl Jackson signed four Final Orders in connection with the attempted unlicensed export of toxins (Aflatoxin and Staphylococcal Enterotoxins) classified as ECCN 1C351, to end-users in North Korea. Orcas International, of Flanders New Jersey agreed to pay an administrative penalty of \$19,800 and have its export privileges denied for four years. Mr. Graneshawar K. Rao, President of Orcas International, will have his export privileges denied for four years. Dolphin International of New Delhi, India, agreed to pay a \$22,000 administrative penalty and have its export privileges denied for four years. Vishwanath Kakade Rao, president of Dolphin International, agreed to have his export privileges denied for four years.

- Becton Dickinson - On December 28, 2005, Assistant Secretary Jackson signed a Final Order against Becton, Dickinson, & Co., of Franklin Lakes, New Jersey. Becton, Dickinson & Co was ordered to pay a \$123,000 administrative penalty, and was subjected to an audit requirement. Becton, Dickinson, & Co., and their Singapore subsidiary, committed a total of thirty-six violations of the Export Administration Regulations (EAR) by exporting various life sciences research products to listed entities from the Indian Department of Atomic Energy and Indian Department of Defense.
- Teledyne Technology - On April 15, 2005, Teledyne Energy Systems Inc. (TES), Hunt Valley, Maryland, agreed to pay a \$16,500 administrative penalty. On three occasions in 1999 and 2000, TES exported technical information on proposed power plants, items subject to the EAR, from the United States to Bharat Heavy Electricals Ltd (BHEL) in New Delhi, India, without the required Commerce Department export licenses. At the time of the export, BHEL was listed on BIS's Entity List, which is a compilation of end-users who have been determined to present an unacceptable risk of diversion to programs for the development of weapons of mass destruction or their means of delivery. TES voluntarily self-disclosed the violations and cooperated fully in the investigation.

- Yarde Metals - On April 12, 2005 Yarde Metals (Yarde) of Happaugue, New York, was ordered to pay a \$10,000 administrative penalty in connection with the unlicensed export of an aluminum heat treatable plate to an organization in India on Commerce's Entity List. On or about May 5, 2003, Yarde engaged in conduct prohibited by the EAR when it exported an aluminum plate from the United States to the Vikram Sarabhai Space Center.
- Air Tiger Express - On March 30, 2005, Air Tiger Express, a freight forwarder located in El Segundo, California, agreed to pay a \$49,500 administrative penalty to settle charges that on nine occasions in 1998 and 1999, it aided and abetted the unlicensed export of items subject to the EAR to organizations in India that were on the Department's Entity List.
- Datum Inc. - On October 28, 2004, Symmetricom, Inc. of San Jose, California, as the successor to Datum, Inc. of Beverly, Massachusetts, agreed to pay a \$35,500 administrative penalty to settle charges that Datum exported of a 10 MHz oscillator to the Government of India, Department of Atomic Energy, Directorate of Purchase and Stores in Mumbai, India.
- New Brunswick Scientific - On August 30, 2004, New Brunswick Scientific was ordered to pay a \$51,000 administrative penalty for the

export of lab equipment, software and a fermentor to an Entity List end-user, the Directorate of Purchase and Stores of the Indian Department of Atomic Energy.

- Chyron Corporation - On August 30, 2004, Chyron Corporation was ordered to pay a \$15,300 administrative penalty for the export of an animation system to an Entity List end-user, the Space Application Center in Ahmedabad, India.
- The Sentry Company - On June 24, 2004, The Sentry Company was ordered to pay a \$25,000 administrative penalty for the export of heat treating containers to an Entity List end-user, Bharat Dynamics Ltd. in Hyderabad, India.
- General Monitors - On June 14, 2004, General Monitors was ordered to pay a \$40,000 administrative penalty for the export of gas and fire detection equipment to an Entity List end-user, Bharat Heavy Electrical Ltd. in Hyderabad, India
- RLC Electronics - On April 14, 2004, RLC Electronics was ordered to pay a \$30,000 administrative penalty for the export of power dividers and low pass filters to the Indian Space Research Organization, Telemetry, Tracking, and Command Network in Bangalore, India, and the export of position switches Sriharikota Space Center in Bangalore, India. Both of the organizations were on the Entity List.

- Atlas Copco - On March 10, 2004, Atlas Copco was ordered to pay a \$13,000 administrative penalty for the export of o-rings and seals to an Entity List end-user, Bharat Heavy Electrical Ltd. in Hyderabad, India.
- Alicat Scientific - On March 4, 2004, Alicat Scientific was ordered to pay a \$7,000 (\$2,000 suspended) administrative penalty for the export of mass flow meters and power supplies to an Entity List end-user, the Department of Atomic Energy in Mumbai India.
- Massive International - On January 15, 2004, Massive International was ordered to pay a \$13,000 administrative penalty for the attempted export of hydraulic stud tensioners to an Entity List end-user, Bharat Heavy Electrical Ltd. in Tiruchirapalli, India.
- Denton Vacuum – On January 30, 2004, Denton Vacuum LLC was ordered to pay a \$7,000 administrative penalty for exporting a sputtering system to an Entity List end-user, the Solid State Physics Laboratory in New Delhi, India.
- Future Metals - On November 12, 2003, Future Metals of Fort Lauderdale, Florida, was ordered to pay a \$180,000 administrative penalty for the export of aluminum sheets and stainless steel tubes to an Entity List end-user, Hindustan Aeronautics Ltd., Engine Division, and also for the export of aluminum bars to another Indian end-user.

- Astro-Med, Inc. - On September 26, 2003, the Commerce Department issued an order implementing the terms of a settlement agreement under which Astro-Med, Inc. of Warwick, Rhode Island agreed to pay a \$5,000 administrative penalty to settle charges that it attempted to export a Dash 10M data recorder to the Nuclear Power Corporation of India without the required Department of Commerce license. BIS charged that Astro-Med knew or had reason to know that the item to be exported would be used directly or indirectly in an unsafeguarded nuclear activity.
- DSV Samson Transport, Inc. - On July 17, 2003, DSV Samson Transport, Inc., a freight forwarding company based in New Jersey, pled guilty in the U.S. District Court for the District of Columbia, and was sentenced to pay a \$250,000 criminal fine and serve five years corporate probation for violations of U.S. export laws. DSV Samson also agreed to pay a \$399,000 administrative penalty to the Department of Commerce to settle the administrative case relating to these illegal exports. Between November 1999 and May 12, 2001, DSV Samson made 30 exports to organizations on the Entity List in India without the required Department of Commerce export licenses. Despite being informed by Special Agents from the Office of Export Enforcement on at least three occasions about the regulations

controlling such shipments, DSV Samson forwarded these shipments and caused violations of Department of Commerce export controls designed to prevent nuclear proliferation.

- Quest Technologies - On April 26, 2001, Quest Technologies was ordered to pay a \$225,000 administrative penalty (\$135,000 suspended) for the illegal export of chlorine and sulfur detectors to India, Vietnam, Taiwan, Saudi Arabia, Egypt, and the United Arab Emirates.
- Detector Electronics Corporation - On November 8, 2001, BIS imposed a \$15,000 administrative penalty on Detector Electronics Corporation of Minneapolis, Minnesota, to settle charges that the company exported U.S.-origin ultraviolet fire detection systems to Bharat Heavy Electrical Ltd. without the required BIS license. Bharat was a company in India that was identified on Commerce's Entity List. BIS alleged that Detector Electronics Corporation exported the fire detection systems to India on two occasions between November and December 1998.
- Optical Associates, Inc. - On September 20, 2000, Optical Associates, Inc., of Milpitas, California, pled guilty in the U.S. District Court in the Northern District of California to the charge that the company illegally exported a mask aligner and related parts, in violation of the

EAR, to the State Bank of India with knowledge that the end-user would be Bhaba Atomic Research Center (BARC), a prohibited entity in India. The mask aligner is controlled for antiterrorism under the EAR. BARC is a division of the Department of Atomic Energy of the Government of India. Unlicensed exports to BARC have been prohibited since June 30, 1997.

- Coherent Inc. - On February 2, 1998, Coherent Inc. was ordered to pay a \$20,000 administrative penalty for the export of plasma tubes for use in argon ion lasers to the Indian Department of Atomic Energy.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#2)  
Senate Foreign Relations Committee  
April 5, 2006**

**Recent Sanctions**

**Question:**

With respect to any U.S. law providing for the imposition of sanctions related to weapons of mass destruction, their means of delivery, or conventional weapons, a summary of any internal investigation, review or other examination undertaken by the Department of State or the President of any Indian entities or other persons, including any Indian national, whether the investigation, review or other examination is open or closed and, if closed, the disposition of each such investigation, review or examination.

**Answer:**

We take seriously all reports of potential proliferation activities and take appropriate action, including imposing sanctions required or authorized under U.S. law, when evidence warrants. For example, the Iran and Syria Nonproliferation Act (ISNA), formerly the Iran Nonproliferation Act of 2000 (INPA), requires a bi-annual review of information for possible sanctions actions and is a rolling process. Other sanctions pursuant to U.S. legal authorities are considered whenever evidence meets the legal criteria.

Since May 1998, the U.S. has imposed nonproliferation sanctions on a number of different Indian entities pursuant to U.S. legal authorities.

Owing to the nature of the information used for making sanctions determinations and ongoing diplomatic exchanges with the Government of India, further details of these particular sanctions cases would need to be provided in a classified setting. We would be happy to brief the Committee as appropriate.

- In July 2002, the U.S. imposed sanctions on the Indian entity Hans Raj Shiv pursuant to the Iran-Iraq Nonproliferation Act for the transfer to Iraq of equipment and technology controlled by the Australia Group. The U.S. also sanctioned Shiv pursuant to the Chemical and Biological Weapons Control and Warfare Elimination Act in February 2003.
- In February 2003, the U.S. imposed sanctions on the Indian entity NEC Engineers Pvt. Ltd. pursuant to Chemical and Biological Weapons Control and Warfare Elimination Act.
- In February 2003, the U.S. imposed sanctions on the Indian entity Protech Consultants, Pvt. Ltd. pursuant to the Iran-Iraq Arms Nonproliferation Act for the transfer to Iraq of equipment and technology controlled by the Australia Group.
- Pursuant to the Iran Nonproliferation Act of 2000 (INPA), the U.S. has imposed sanctions four times on Indian entities. In September 2004, the U.S. imposed INPA penalties on Dr. C. Surendar and Dr.

Y.S.R. Prasad; penalties on Dr. Surendar were rescinded in December 2005. Also in December 2005, the U.S. imposed INPA penalties on the Indian entities Sabero Organic Chemicals Gujarat Ltd. and Sandhya Organic Chemicals Pvt. Ltd.

India's new Weapons of Mass Destruction (WMD) and their Delivery Systems (Prohibitions of Unlawful Activities) Act, enacted in May 2005, with its stronger "catch-all" provisions, strengthens considerably the government's regulatory ability to control transfers of otherwise uncontrolled items that could contribute to a WMD or missile program of concern.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#1)  
Senate Foreign Relations Committee  
April 5, 2006**

**India's Export Control Law**

**Question:**

Secretary Rice, in November of last year, U/S Joseph stated with regard to India's new export control law (Weapons of Mass Destruction and Their Delivery Systems (Prohibition of unlawful Activities) Act, adopted in 2005), that "Department of State and Commerce lawyers and export control experts have reviewed" that law but that "no consolidated analytical document representing an interagency assessment of India's export control law and regulation" was available. Additionally, I asked whether the Department would furnish questions it had sent to the Indian Government concerning that law to this Committee, and was informed that "[g]iven the sensitivities of the diplomatic communications involved, we cannot provide the information for the record."

Could you please provide me in classified form the question the Department asked the Indian Government regarding its WMD law?

**Answer:**

We would be happy to provide a classified briefing to the Committee on the questions raised with the Indian government regarding its WMD law.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#2)  
Senate Foreign Relations Committee  
April 5, 2006**

**India's Export Control Law**

**Question:**

Please provide this Committee with a consolidated analytical document representing an interagency assessment of Indian export control laws and regulations.

**Answer:**

No such consolidated analytical document representing an interagency assessment of Indian export controls and regulations currently exists. We would be happy to brief the Committee on India's export control laws and regulations.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#3)  
Senate Foreign Relations Committee  
April 5, 2006**

**India's Export Control Law**

**Question:**

Secretary Rice, on March 10, 2006, the Washington, DC,-based Institute for Science and International Security (ISIS) released a report which concluded that India has “a well-developed, active, and secret Indian program to outfit its uranium enrichment program and circumvent other countries’ export control efforts” and that “Indian procurement methods for its nuclear program leak sensitive nuclear technology.”

In classified form if necessary, but in open form if possible, please provide me with the Department’s assessment of the allegations raised in the ISIS report on Indian procurement, particularly with regard to the alleged instances of illegal acquisition of equipment, diversion of such equipment from stated end uses and/or end users, and any risk of onward proliferation arising out of such activities.

**Answer:**

We would be happy to discuss these allegations in classified session.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#4)  
Senate Foreign Relations Committee  
April 5, 2006**

**India's Export Control Law**

**Question:**

How would the requirements of relevant U.S. licenses assure that any U.S. exports to Indian companies and trading agents that are alleged to have promulgated or purchased sensitive tender documents related to uranium enrichment or other sensitive parts of the nuclear fuel cycle do not transfer the know-how or items exported from the United States to India to other companies or countries?

**Answer:**

To clarify the scope of the question, the “sensitive parts of the nuclear fuel cycle” will not be included in U.S.-India civil nuclear cooperation. Our draft agreement for peaceful nuclear cooperation provides that “sensitive nuclear technology” may not be transferred without an amendment to the agreement, which would be subject to congressional review.

India's safeguards agreement and Additional Protocol with the IAEA will provide the IAEA with access to Indian facilities and programs, including documentation, which will provide assurances against internal diversion and re-transfer of controlled technology.

The details of licensing requirements are within the purview of the licensing agencies, generally the Department of Commerce, the Department of Energy, and the Nuclear Regulatory Commission.

For dual-use nuclear exports administered by the Department of Commerce, there are several ways the U.S. is assured that exports are going to reliable recipients of U.S. origin items and have not been diverted to unauthorized end user or end uses. As part of the license application package we require nuclear certification that the item(s) will not be used in any of the prohibited activities described in §744.2(a) of the EAR. Through the licensing process, the intelligence and enforcement communities provide information on the bona fides of prospective end-users. Commerce determines the bona fides of the transaction and suitability of the end-user through the use of pre-license checks. This information is then used to make licensing decisions. As part of the approval process, export license normally have conditions attached that prohibit reexport, retransfer, or use in sensitive nuclear, chemical, biological, or missile end uses. We require applicants to inform end-users of the licensing conditions. In addition, the U.S. has an end use assurance letter from the Government of India that commits to ensure that items are not transferred from or through India for use in prohibited unsafeguarded nuclear, WMD, or WMD delivery programs. Also through post-shipment verifications, the U.S. visits recipients of U.S.-origin

items to ensure that the items have actually been delivered to the authorized ultimate consignee or end-user and those items are being used as stated on the export license application.

The transfer of uranium enrichment or other nuclear fuel technology requires authorization by the Secretary of Energy under Section 57(b) of the Atomic Energy Act of 1954. The regulations that implement Section 57(b) are found in 10 CFR Part 810 which requires that, prior to such approval, government-to-government assurances outlining the controls/conditions that will be used for securing this technology must be in place. This includes the requirement that the transfer, anything derived from the transfer, and anything that is produced or modified in a facility constructed as a result of the transfer will be used for peaceful purposes. Further, the United States places additional conditions on the authorization to transfer the technology that limits access and prohibits the retransfer of the technology.

**Questions for the Record Submitted to  
Secretary of State Condoleezza Rice by  
Senator Richard Lugar (#1)  
Senate Foreign Relations Committee  
April 5, 2006**

**India's Status**

**Question:**

Secretary Rice, the July 2005 Joint Statement terms India “a responsible state with advanced nuclear technology.”

For the purposes of U.S. compliance with the NPT, and under relevant U.S. laws making reference to non-nuclear weapon state or states, does India remain a non-nuclear weapon state?

**Answer:**

While India has nuclear weapons and we must deal with this fact in a realistic, pragmatic manner, we do not recognize India as a nuclear weapon state or seek to legitimize India's nuclear weapons program.

The 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT) defines a “Nuclear Weapon State” as “one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to January 1, 1967.” India does not meet this definition, and we do not seek to amend the Treaty to provide otherwise. U.S. law adopts the NPT definition, so India is a non-nuclear weapon state for purposes of U.S. law.

**Annex**  
**RECENT INDIA CASES**

<b>ORDER DATE</b>	<b>RESPONDENT</b>	<b>OEE CASE NAME</b>	<b>CHARGES</b>	<b>SECTIONS VIOLATED<sup>1</sup></b>	<b>VSD</b>	<b>RESULT</b>	<b>CRIMINAL CASE</b>
03/17/06	Tech Pro, Inc.	In the Matter of Tech Pro, Inc.	Exported software upgrades to the Vikram Sarabhai Space Center of Thiruvanthapuram, India, an organization on the Entity list	764.2(a) [1]	No	Settlement Agreement - civil penalty of \$7,000	No
03/02/06	Orcas International, Inc.	In the Matter of Orcas International, Inc.	Conspired and acted in concert with others, known and unknown, to export and attempted to export toxins from the United States to North Korea without the required license	764.2(d) [1] 764.2(b) [1]	No	Settlement Agreement - civil penalty of \$19,800; export privileges denied for four years for items specified on the Commerce Control List	No
03/02/06	Vishwanath Kakade Rao	In the Matter of Orcas International, Inc.	Conspired and acted in concert with others, known and unknown, to export and soliciting an export of toxins from the United States to North Korea without the required license	764.2(d) [1] 764.2(c) [1]	No	Settlement Agreement - export privileges denied for four years	No
03/02/06	Graneshawar K. Rao	In the Matter of Orcas International, Inc.	Conspired and acted in concert with others, known and unknown, to export and attempted to export toxins from the United States to North Korea without the required license	764.2(d) [1] 764.2(b) [1]	No	Settlement Agreement - export privileges denied for four years for items specified on the Commerce Control List	No
03/02/06	Dolphin International, Ltd.	In the Matter of Orcas International, Inc.	Conspired and acted in concert with others, known and unknown, to export and soliciting an export of toxins from the United States to North Korea without the required license	764.2(d) [1] 764.2(c) [1]	No	Settlement Agreement - civil penalty of \$22,000; export privileges denied for four years	No

<b>ORDER DATE</b>	<b>RESPONDENT</b>	<b>OEE CASE NAME</b>	<b>CHARGES</b>	<b>SECTIONS VIOLATED<sup>1</sup></b>	<b>VSD</b>	<b>RESULT</b>	<b>CRIMINAL CASE</b>
12/28/05	Becton, Dickinson and Company	In the Matter of Becton, Dickinson and Company	Exported biomedical research products, labware for tissue culture and fluid handling and reagent systems for life sciences research to organizations in India on the Entity List without the required licenses	764.2(a) [36]	Yes	Settlement Agreement - civil penalty of \$123,000; perform audit of internal compliance program within 24 months	No
08/10/05	Quantachrome Instruments	In the Matter of Quantachrome Instruments	Exported an Automated Surface Area and Pore Size Analyzer and related scientific instruments to the Department of Atomic Energy, Bhabha Atomic Research Center, an organization on the BIS Entity List without obtaining the required license	764.2(a) [1]	No	Settlement Agreement - civil penalty of \$6,000	No
07/13/05	Gould Pumps, Inc.	In the Matter of Gould Pumps, Inc.	Exported magnetic drive and double mechanical seal industrial pumps and parts to Egypt, Saudi Arabia, India, Taiwan and the People's Republic of China without the required licenses; made false statements on SEDs	764.2(a) [13] 764.2(g) [13]	Yes	Settlement Agreement - civil penalty of \$123,500	No
06/13/05	Lufthansa German Airlines	In the Matter of Lufthansa German Airlines	Aided and abetted the export and attempted export of Cobalt-57 to the Department of Atomic Energy, Directorate of Purchase and Stores, India, an organization on the BIS Entity List without the required licenses and with knowledge that a violation would occur	764.2(b) [1] 764.2(b) [1] 764.2(e) [1]	No	Settlement Agreement - civil penalty of \$18,000	No
03/31/05	Teledyne Energy Systems, Inc.	In the Matter of Teledyne Technologies, Inc.	Exported technical information on proposed power plants to Bharat Heavy Electricals Ltd ("BHEL") in New Delhi, India, an organization on the BIS Entity List without the required licenses	764.2(a) [3]	Yes	Settlement Agreement - civil penalty of \$16,500	No

<b>ORDER DATE</b>	<b>RESPONDENT</b>	<b>OEE CASE NAME</b>	<b>CHARGES</b>	<b>SECTIONS VIOLATED<sup>1</sup></b>	<b>VSD</b>	<b>RESULT</b>	<b>CRIMINAL CASE</b>
03/30/05	Air Tiger Express	In the Matter of Air Tiger Express	Aided and abetted the unlicensed exports of items subject to the EAR to organizations in India that were on the Entity List	764.2(b) [9]	No	Settlement Agreement - civil penalty of \$49,500	No
03/14/05	Rockwell Automation, Inc.	In the Matter of Rockwell Automation, Inc.	Exported balancing machines to Malaysia, Mexico, Venezuela without obtaining the required licenses; made false statements on SED concerning authority to export; exported computer software and accessories to Bharat Heavy Electrical Limited, Hardwar, an organization on the BIS Entity List, without the required license; reexported software, data collectors and vibration monitors and associated parts from the United Kingdom to organizations listed on the Entity List without the required licenses	764.2(a) [11] 764.2(g) [6]	Yes	Settlement Agreement - civil penalty of \$46,750	No
02/25/05	Yarde Metals, Inc.	In the Matter of Yarde Metals, Inc.	Exported one aluminum plate to Vikram Sarabhai Space Center (VSSC) in India, an organization on the Entity List without the required license	764.2(a) [1]	No	Settlement Agreement - civil penalty of \$10,000	No
12/06/04	Terra Universal Inc.	In the Matter of Terra Universal Inc.	Exported EAR99 items (12 stainless steel pass-through chambers and accessories) to the Solid State Physics Laboratory, an organization on the BIS Entity List without the required license	764.2(a) [1]	No	Settlement Agreement - civil penalty of \$6,000	No
11/29/04	E.A. Fischione Instruments, Inc.	In the Matter of E.A. Fischione Instruments, Inc.	Attempted to export EAR99 item (a plasma cleaner) to an organization in India on the BIS Entity List without the required license	764.2(c) [1]	No	Settlement Agreement - civil penalty of \$6,300	No

<b>ORDER DATE</b>	<b>RESPONDENT</b>	<b>OEE CASE NAME</b>	<b>CHARGES</b>	<b>SECTIONS VIOLATED<sup>1</sup></b>	<b>VSD</b>	<b>RESULT</b>	<b>CRIMINAL CASE</b>
11/24/04	Shivram Rao	In the Matter of MTS Systems Corporation	Conspiracy to export EAR99 items (a thermal mechanical fatigue test system and a universal testing machine) to the Indira Gandhi Centre for Atomic Research ("IGCAR"), an organization on the BIS Entity List without the required license; took actions to evade the Regulations by diverting the true ultimate consignee; made false statements in the course of an investigation	764.2(d) [1] 764.2(h) [2] 764.2(g) [1]	No	Export privileges denied for 10 years for each (Default Judgment)	No
11/24/04	Technology Options (India) Pvt. Ltd.	In the Matter of MTS Systems Corporation	Conspiracy to export EAR99 items (a thermal mechanical fatigue test system and a universal testing machine) to the Indira Gandhi Centre for Atomic Research ("IGCAR"), an organization on the BIS Entity List without the required license; took actions to evade the Regulations by diverting the true ultimate consignee; made false statements in the course of an investigation	764.2(d) [1] 764.2(h) [2] 764.2(g) [1]	No	Export privileges denied for 10 years for each (Default Judgment)	No

<b>ORDER DATE</b>	<b>RESPONDENT</b>	<b>OEE CASE NAME</b>	<b>CHARGES</b>	<b>SECTIONS VIOLATED<sup>1</sup></b>	<b>VSD</b>	<b>RESULT</b>	<b>CRIMINAL CASE</b>
11/18/04	Bernard A. Spear	In the Matter of Preston Scientific, Inc.	Exported EAR99 items (an amplifier, connector socket and spare parts) to an organization in India on BIS Entity List without the required licenses and with knowledge that violations would occur; made false statements on SED; made false statement to OEE Special Agent in the course of an investigation	764.2(a) [3] 764.2(e) [3] 764.2(g) [3]	No	Settlement Agreement - export privileges denied for three years	No
11/18/04	Halear, Inc.	In the Matter of Preston Scientific, Inc.	Exported EAR99 items (an amplifier, connector socket, and spare parts) to an organization in India on BIS Entity List without the required licenses and with knowledge that violations would occur; made false statements on SEDs; made false statement to OEE Special Agent in the course of an investigation	764.2(a) [3] 764.2(e) [3] 764.2(g) [3]	No	Settlement Agreement - civil penalty of \$60,000; export privileges denied for three years	No
11/12/04	Bristol-Myers Squibb Medical Imaging, Inc., successor to Duport Merck Pharmaceutical Company	In the Matter of DuPont Merck Pharmaceutical Company	DuPont Merck exported and attempted to export Cobalt-57, iron foil, and potassium ferrocyanide to the Department of Atomic Energy, Directorate of Purchase and Stores, an organization on the Entity List without the required licenses and with knowledge that a violation would occur	764.2(a)[1] 764.2(c)[1] 764.2(e)[1]	No	Settlement Agreement - civil penalty of \$16,200	No
11/09/04	PartMiner, Inc.	In the Matter of PartMiner, Inc.	Exported electronic components to organizations in India on the BIS Entity List without the required licenses; failed to file SED; made false statements on SED	764.2(a)[14] 764.2(g)[4]	Yes	Settlement Agreement - civil penalty of \$50,000	No

<b>ORDER DATE</b>	<b>RESPONDENT</b>	<b>OEE CASE NAME</b>	<b>CHARGES</b>	<b>SECTIONS VIOLATED<sup>1</sup></b>	<b>VSD</b>	<b>RESULT</b>	<b>CRIMINAL CASE</b>
10/27/04	Symmetricom, Inc., successor to Datum, Inc.	In the Matter of Datum, Inc.	Exported cesium frequency standard equipment to Malaysia without the required license; made false statements on SEDs concerning the authority to export; exported ovenized quartz crystal oscillator to an organization in India on the Entity List without the required license and with knowledge that a violation would occur	764.2(a) [2] 764.2(g) [2] 764.2(e) [1]	No	Settlement Agreement - civil penalty of \$35,500	No

<b>ORDER DATE</b>	<b>CASES</b>	<b>CHARGES</b>	<b>SECTIONS VIOLATED<sup>1</sup></b>	<b>RESPONDENTS</b>	<b>RESULT</b>
08/30/04	In the Matter of Chyron Corporation	Exported animation system to the Space Application Center in Ahmedabad, India, an organization on the Entity List, without the required license with knowledge that a violation of the EAR would occur; made false or misleading statement of material fact in connection with the preparation of an export control document	764.2(a) [1] 764.2(e) [1] 764.2(g) [1]	Chyron Corporation	Settlement Agreement - civil penalty of \$15,300
08/30/04	In the Matter of New Brunswick Scientific Co., Inc.	Exported lab equipment, software and fermentor to the Directorate of Purchase and Stores, Department of Atomic Energy (DPS) in India, an organization on the Entity List, without the required license; failed to file a SEDs; exported fermentors to Taiwan and Israel without the required licenses; made false or misleading statements of material fact in connection with the preparation of an export control documents	764.2(a) [8] 764.2(g) [2]	New Brunswick Scientific Co., Inc	Settlement Agreement - civil penalty of \$51,000

<b>ORDER DATE</b>	<b>CASES</b>	<b>CHARGES</b>	<b>SECTIONS VIOLATED<sup>1</sup></b>	<b>RESPONDENTS</b>	<b>RESULT</b>
06/24/04	In the Matter of Berkeley Nucleonics Corporation	Exported pulse generators to the Directorate of Purchase and Stores, Department of Atomic Energy (DPS) in India and the Nuclear Power Corporation, organizations on the Entity List without the required licenses, with knowledge that violations of the Act would occur; made false or misleading statements of material fact in connection with the preparation and submission of an export control document; failed to file a SED; attempted to export from the United States to the DPS in India; former BNC employees Richard Hamilton and Vincent Delfino were also charged with export control violations	764.2(a) [5] 764.2(e) [5] 764.2(g) [3] 764.2(c) [1]	Berkeley Nucleonics Corporation	Administrative Penalty: Settlement Agreement - civil penalty of \$40,000  Criminal Penalty:  BNC: Five years' probation and \$300,000 criminal fine  Hamilton: Two years' probation, a \$1,000 criminal fine, and 100 hours of community service, and prohibited from engaging in or facilitating export transactions  Delfino: Two years' probation, a \$1,000 criminal fine, and 100 hours of community service, and prohibited from engaging in or facilitating export transactions
06/24/04	In the Matter of The Sentry Company	Exported heat treating containers to Bharat Dynamics Ltd., Hyderabad, India, an organization on the Entity List without the required licenses	764.2(a) [4]	The Sentry Company	Settlement Agreement - civil penalty of \$25,000
06/24/04	In the Matter of Kennametal Inc.	Exported nickel powder to Israel, Chile, Mexico, Peru, Taiwan, and India without the required licenses; made false or misleading representation on SED concerning authority to export; failed to retain export control documents	764.2(a) [45] 764.2(g) [27] 764.2(i) [3]	Kennametal Inc.	Settlement Agreement - civil penalty of \$262,500
06/04/04	In the Matter of General Monitors, Inc.	Caused the shipment of gas and fire detection equipment from the United States to Bharat Heavy Electrical Limited of Hyderabad, India (BHEL), an organization on the Entity List without the required licenses; made false statements on Shippers Export Declarations (SEDs)	764.2(a)[6] 764.2(g)[12]	General Monitors, Inc.	Settlement Agreement - civil penalty of \$40,000

<b>ORDER DATE</b>	<b>CASES</b>	<b>CHARGES</b>	<b>SECTIONS VIOLATED<sup>1</sup></b>	<b>RESPONDENTS</b>	<b>RESULT</b>
04/14/04	In the Matter of RLC Electronics, Inc.	Exported power dividers and low pass filters to the Indian Space Research Organization (“ISRO”), Telemetry, Tracking and Command Network (“ISTRAC”), Bangalore, India, an organization on the Entity List without the required licenses; filed a Shippers Export Declaration with the U.S. Government that represented falsely that the power dividers exported to ISRO were eligible for export as NLR	764.2(a)[4] 764.2(g)[1]	RLC Electronis, Inc.	Settlement Agreement - civil penalty of \$30,000
03/10/04	In the Matter of Atlas Copco Compressors Inc.	Caused the shipment of items subject to the EAR (seals and o-rings) to Bhrrat Heavy Electrical Limited, Hyderabad, Inda (BHEL), an organization on the Entity List; engaged in prohibited conduct by submitting an export license application to BIS that sought authorization to ship items that had already been shipped	764.2(a) [2]	Atlas Copco Compressors Inc.	Settlement Agreement - civil penalty of \$13,000
03/04/04	In the Matter of Alicat Scientific, Inc.	Caused the export of mass flow meters and power supplies to the Department of Atomic Energy, Mumbia, India, an organization on the Entity List	764.2(a) [1]	Alicat Scientific, Inc.	Settlement Agreement - civil penalty of \$7,000, \$2,000 suspended
02/26/04	In the Matter of Dunmore Corporation	Exported metallized polyimide films to India without obtaining the required authorization	764.2(a)[4]	Dunmore Corporation	Settlement Agreement - civil penalty of \$27,000
01/15/04	In the Matter of Massive International Incorporated	Attempted to export hydraulic stud tensioners to Bharat Heavy Electrical Limited of Tiruchirapalli, India, an organization on the Entity List, without the required license with knowledge that a violation of the EAR would occur	764.2(c) [1] 764.2(e) [1]	Massive International Incorporated	Settlement Agreement - civil penalty of \$13,000
01/30/04	In the Matter of Denton Vacuum, LLC	Exported a sputtering system to Solid State Physics Laboratory, New Delhi, India, an organization of the Entity List; filed or caused to be filed a SED that represented falsely that the sputtering system was eligible for export under the authority of GDEST	764.2(a) [1] 764.2(g) [1]	Denton Vacuum, LLC	Settlement Agreement - civil penalty of \$7,000

<b>ORDER DATE</b>	<b>CASES</b>	<b>CHARGES</b>	<b>SECTIONS VIOLATED<sup>1</sup></b>	<b>RESPONDENTS</b>	<b>RESULT</b>
11/12/03	In the Matter of Future Metals, Inc.	Exported aluminum bars to India without the required export licenses, with knowledge that a violation of the Act, the Regulations, or any other, license or authorization; exported stainless steel tubes to Hindustan Aeronautics Limited, Engine Division, in India, an organization of the Department of Commerce Entity List; failed to retain certain export control documents	764.2(a)[17] 764.2(e)[17] 764.2(i)[6]	Future Metals, Inc.	Settlement Agreement - civil penalty of \$180,000
09/26/03	In the Matter of Astro-Med, Inc.	Attempted to export a Dash 10M data recorder to the Nuclear Power Corporation of India, an organization listed on BIS's Entity List, without the required license	764.2(c) [1]	Astro-Med, Inc.	Settlement Agreement - civil penalty of \$5,000
07/17/03	In the Matter of DSV Samson Transport, Inc.	Caused the export of items to organizations listed on the BIS Entity List without the required license, with knowledge that the goods would be exported in violation of the Regulations; made false and misleading material misrepresentations on Shipper's Export Declaration concerning the authority to export	764.2(b) [33] 764.2(e) [23] 764.2(g) [3]	DSV Samson Transport, Inc.	Administrative Penalty: Settlement Agreement - civil penalty of \$399,000  Criminal Penalty: \$250,000 criminal fine and five years' corporate probation
11/08/01	In the Matter of Detector Electronics Corporation	Exported U.S.-origin ultraviolet fire detection systems to Bharat Heavy Electrical Limited, an organization on the Entity List, without obtaining the required licenses	764.2(a) [2]	Detector Electronics Corporation	Settlement Agreement - civil penalty of \$15,000
04/26/01	In the Matter of Quest Technologies, Inc.	Exported from the United States chlorine and sulphur dioxide gas sensors to Vietnam, Taiwan, India, the United Arab Emirates, Egypt, and Saudi Arabia without obtaining the required licenses	764.2(a) [45]	Quest Technologies, Inc.	Settlement agreement - civil penalty of \$225,000, \$135,000 suspended for one year
03/15/01	In the Matter of Optical Associates, Inc.	Exported U.S.-origin Mask Aligner and parts from the United States to Bhaba Atomic Research Center, an entity on the Department of Commerce Entity List	764.2(a) [1]	Optical Associates, Inc.	Export privileges denied to India for three years
02/02/98	In the Matter of Coherent, Inc.	Exported to the Department of Atomic Energy, in India, U.S.-origin plasma tubes for use in argon ion lasers without the required validated export licenses	787.6 [2]	Coherent, Inc.	Settlement agreement - civil penalty of \$20,000

<b>ORDER DATE</b>	<b>PARTIES</b>	<b>CHARGES</b>	<b>SENTENCE</b>
11/18/05	Fiber Materials, Walter Lachman, Maurice Subilia	Conspiracy and violation of the Export Administration Act related to the unlicensed export to India of equipment to manufacture carbon-carbon components with applications in ballistic missiles	<p>Lachman: Three years' probation (first year in home detention); \$250,000 criminal fine</p> <p>Subilia: Three years' probation (first six months in community confinement, followed by one year in home detention); \$250,000 criminal fine</p> <p>Fiber Materials: \$250,000 criminal fine</p>
6/6/04	In the Matter of Coherent, Inc.	Exported to the Department of Atomic Energy, in India, U.S.-origin plasma tubes for use in argon ion lasers without the required validated export licenses	Coherent, Inc.